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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 939th MEETING

Held at the Palais des Nations, Geneva,
on Monday, 3 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7)

Fifth, sixth, seventh and eighth periodic reports of Belgium (CERD/C/194/Add.3
and HRI/CORE/51)

1. At the invitation of the Chairman, Mr. Reyn, Mr. Van Craen, Mr. Wilmotte and Mr. Sant'Angelo (Belgium) took places at the Committee table.
2. Mr. REYN (Belgium) informed the members of the Committee that Belgium particularly regretted its backlog of reports since it attached great importance to the bodies and mechanisms established by the United Nations for the protection and promotion of human rights. The delay was mainly due to the State reform process and the rapid pace of constitutional and legislative change in the country. In the space of about 10 years, the Belgian State had gone over from a unitary structure to a federal system, which had brought about institutional changes that were still under way.
3. The report of Belgium was in three parts. The first part (CERD/C/194/Add.3) covered the legal provisions the country had adopted under the various articles of the Convention, the second part (HRI/CORE/51) contained political, socio-economic and juridical information, compiled in accordance with the consolidated guidelines concerning the reports of States parties, and the third part consisted of a series of documents intended to supplement the information in the main report.
4. Drawing attention to some of the components of its human rights activities to which the Belgian Government attached the utmost importance, he said that Belgium had always condemned all forms of racial discrimination and rejected all forms of racial intolerance as being a violation of the fundamental rights of the individual. Within its borders, it was constantly at pains to ensure compliance with its obligations, particularly those deriving from the commitments it had undertaken, and it had taken a number of measures to guarantee the rights of every individual. Belgium continued to support in the various forums all measures that would ensure the smooth functioning of the monitoring mechanisms and was in favour of in-depth, continuous, open and frank dialogue with the various competent bodies, including the Committee for the Elimination of Racial Discrimination, in order to ensure a better flow of information and deeper mutual understanding.

5. Mr. WILMOTTE (Belgium), outlining some of the fundamental principles governing the system of legal protection for aliens residing in Belgium, drew the Committee members' attention to the Belgian Nationality Code as established by an Act of 1984, taking into account Belgium's international obligations in that area. The Code, which had established the principle of equality between men and women for the acquisition of nationality, had been amended in July 1991 by an Act providing for automatic acquisition of Belgian nationality by third-generation children, in other words children born in Belgium of parents who had themselves been born in the country.

6. On the subject of equal treatment, he recalled that article 128 of the Constitution stated that any alien on Belgian territory enjoyed the protection accorded to persons and property, unless otherwise specified by the law. There were special regulations applicable to aliens with regard to entry, residence and removal. It should be noted in that connection that since 15 July 1992, it had been the Minister of the Interior, and no longer the Minister of Justice, who was competent to deal with questions relating to the entry, residence and removal of aliens. Those regulations might appear to be discriminatory, but the principle of equal treatment was the cornerstone of Belgian policy with regard to aliens. The latter enjoyed the same constitutional freedoms as Belgian citizens. That constitutional principle was underpinned by the international instruments which Belgium had ratified, such as the Convention for the Protection of Human Rights and Fundamental Freedoms, the International Covenant on Civil and Political Rights and the International Convention on the Elimination of All Forms of Racial Discrimination.

7. With regard to the juridical effects of international instruments on the domestic legal system, he said that, in the absence of any relevant provision in a treaty, it was for the judge to determine whether the treaty was directly applicable. As to determining the status of international instruments in the hierarchy of laws in Belgium, the various attempts made to incorporate into the Constitution a general principle regarding the juridical validity of treaties in relation to that of domestic legislation had been unsuccessful. The matter had been settled by case law; the Supreme Court of Appeal (Cour de cassation), which was the highest court, had recognized the primacy of international instruments over national laws even if the latter had been

adopted after the instrument in question. In other words, Belgian citizens and aliens alike could directly invoke the provisions of international treaties before the administrative authorities and courts, and judges were obliged to take them into consideration.

8. Mr. SANT'ANGELO (Belgium), giving further information concerning anti-racist measures taken in Belgium, said that an Office of the Crown Commissioner for Immigration Policy had been set up by the Government just over three years previously. Under the authority of the Prime Minister, it was responsible for considering the situation of immigration and immigrants and recommending appropriate measures. The Crown Commissioner was assisted in his duties by an Interministerial Conference on Immigration, headed by the Prime Minister. The agenda of the Conference was drawn up by the Office of the Commissioner, which meant that the latter could include in it any matters it felt needed urgent attention. The Office was also responsible for explaining to the general public, in other words to immigrants and native Belgians alike, the recommendations that were submitted and the decisions taken.

9. There were no ethnic minorities in Belgium and immigrants fell into two major categories: immigrants of Moroccan origin and immigrants of Turkish origin. Those were the two communities most often victimized and subject to discrimination, racism and xenophobia. While attaching due importance to the Act of 30 July 1981 whose purpose was to suppress certain acts based on racism or xenophobia, the Office of the Crown Commissioner was mainly concerned with looking into the social, economic and cultural causes of discrimination, and recommended measures to foster the integration of immigrants into society. Those measures had two objectives: equality of rights and equal treatment for all citizens.

10. Mr. FERRERO COSTA, rapporteur for Belgium, welcomed the resumption of the dialogue with Belgium, which was submitting four reports together, covering the period 1984-1990. He thanked the Belgian Government for the large amount of information provided for the Committee in writing, and the Belgian delegation for the additional information presented orally.

11. He did not think, however, that a State should be so slow in submitting its reports, and recalled that article 9 of the Convention and the Committee's guidelines specified a time-limit for reporting. The reason given by Belgium,

namely its constitutional and legislative reforms, did not justify such a backlog, since a State embarking upon a reform process should, on the contrary, keep the Committee regularly informed of progress made. As to the shortage of staff referred to by the Belgian Government (CERD/C/194/Add.3, para. 1), he pointed out that the Committee had already made it clear on several occasions that the Centre for Human Rights could provide assistance to States which had difficulty in preparing their reports. He hoped, therefore, that Belgium would be able to submit its following report within the prescribed time-limit.

12. As the Belgian delegation had pointed out, the report before the Committee consisted of three parts - a basic information document (HRI/CORE/51), the eighth periodic report (CERD/C/194/Add.3), combining the fifth, sixth, seventh and eighth periodic reports due from Belgium, and annexes which were unfortunately not available in Spanish.

13. The basic document and the report alone represented 71 pages of information, from which it emerged clearly that the case of Belgium was a very complex one, there being, on the one hand, the Flemish, Walloon and German-language communities and, on the other, aliens, who accounted for 9 per cent of the population. The information provided by Belgium also included a description of constitutional and legislative reforms, as well as laws already in force, such as the 1981 Act for the repression of certain acts based on racism or xenophobia. That Act had already been considered by the Committee, but warranted further consideration. Since he could not review all the information provided, he would confine his comments to a few points and would leave it to other members of the Committee to make their own comments.

14. With regard, first of all, to the core document constituting the first part of the State party's reports (HRI/CORE/51), he noted that Belgium was made up of three regions (the Walloon Region, the Brussels-Capital Region and the Flemish Region) and four linguistic communities (one French-speaking, one Dutch-speaking, one German-speaking and one bilingual community, that of Brussels), which gave rise to a complex institutional system, incorporating checks and balances.

15. He noted that Belgium provided a large number of statistics on aliens living on its territory, but very few on the national population. He would therefore like to have details on the situation of nationals, the relations

between the various linguistic communities and their distribution in each of the three regions of Belgium. In the core document, reference was made to two major communities, the French-language community and the Dutch-language community, and he wondered about the situation of German-speaking citizens and that of other national minorities and about how they could protect their rights.

16. He also wished to have further information on the Court of Arbitration referred to in paragraph 42 of the core document. How did it function? Had any cases been brought before it, and, if so, what decisions had it handed down?

17. Referring to paragraph 44 of the core document, he said that the characteristic feature of a federal State structure was the existence of two distinct legal orders, that of the federal entity and that of its component parts, each with its own system of legislative and executive rules and bodies. That was the case of Belgium, where the communities and the regions were authorities with the same status as the national authority. He wondered how the system worked between the three regions and four linguistic communities of Belgium and whether there was any incompatibility between the laws of the regions and of the communities. He also wondered whether there might not be any conflict between the legislative powers of the various communities and regions and the competence of the Belgian State.

18. On the subject of the automatic incorporation of international instruments into domestic law, he wished to know how the Convention was incorporated into national legislation and how it was implemented.

19. Referring to the Act of 30 July 1981 to suppress certain acts based on racism or xenophobia, referred to in paragraphs 11 to 26 of the report CERD/C/194/Add.3, he asked whether the system of protection for aliens mentioned in paragraph 11 covered citizens as well. The same paragraph stated that it lay with judicial practice to "sift out gradually the meaning of such an act" (of racism or xenophobia). It would be desirable for the Committee to have more ample information on such judicial practice. In paragraph 13, dealing with article 1 of the Act, the broad scope of the Act was underscored; and yet it emerged from paragraph 18 of the report that an offence must be of a public character, which might be regarded as a restriction on the scope of the Act. Some clarification was needed on the question of differentiation,

which, according to paragraph 14, was tolerated whereas discrimination was not. Further information would also be welcomed on jurisprudence in connection with cases brought before the Brussels and Charleroi courts of first instance and the Brussels and Hasselt correctional courts, referred to in paragraph 17. The same applied to the case law mentioned in paragraph 20 (concerning article 2 of the Act) which was based on decisions by the Hasselt and Namur correctional courts and the Liège Court of Appeal.

20. Article 3 of the Act of 1981 did not seem to cover all the provisions of article 4 of the Convention. For instance, in paragraph 22 of the report, reference was made to organizations advocating discrimination which "would cease to exist for lack of members". Did that mean that those associations were acceptable under the law and that it was only the acts of their members that were reprehensible? He pointed out that article 4 of the Convention required organizations of that kind to be declared illegal as such. Information was required on whether there were groups in Belgium which advocated xenophobia and, if so, what action the Government was taking against them.

21. In connection with article 5 of the Act in question, he noted that, according to paragraph 25 (a) of the report, associations combating racial discrimination could go to court if they had "had legal personality for at least five years", which seemed a long time. It would be useful to know whether any legal action had in fact been taken by such organizations.

22. Article 5 of the Convention referred to the question of the right to vote in local elections, a subject dealt with in paragraphs 60 to 66 of the report, from which it emerged that the granting of such a right to nationals of other European Community countries was under consideration. What was the situation regarding other aliens? That was a problem that would certainly arise in other countries of the European Community. Although article 1, paragraph 2, of the Convention stipulated that the Convention did not apply to distinctions made by a State party between citizens and non-citizens, the Convention did apply, according to paragraph 3 of the same article, whenever there was any discrimination against a particular nationality.

23. In paragraphs 67 to 70 of the report, concerning representation through advisory councils and other forms of participation in public life at the local level, reference was made to several aliens advisory bodies; while those were

certainly commendable initiatives, he wished to know whether they actually worked. He also wished to know what were the "other forms of participation" by foreigners in public life at the local level.

24. The report went on to deal with access to employment in the public service. According to paragraph 74, the communes could hire foreigners on a contractual basis. Did that apply only to nationals of countries of the European Community, or to persons of other nationalities as well? With regard to aliens' freedom of opinion, assembly and association, dealt with in paragraphs 80 to 85, he asked what restrictions to those freedoms were provided for under the Act of 15 December 1980. Reference was made to some of those restrictions in paragraph 83, but it would be useful for the Committee to know whether there were any others.

25. On the subject of social legislation concerning migrant workers, he asked in what cases the professional identity card referred to in paragraph 88 of the report was granted or withheld. That was a particularly important point since it emerged from paragraph 89 that it was an offence for a foreign worker not to be in possession of such a card.

26. By way of general comment, he said that it appeared from a study entitled "Measure for Measure" by Ian Forbes and Geoffrey Meade of Southampton University that there was widespread racial discrimination in the countries of the European Community. That study, presented as a comparative analysis of measures taken to combat racial discrimination in the member countries of the European Community, showed that, unfortunately, little progress had been made in that respect and that, to many people's minds, racial discrimination was still a normal way of behaving. It would be useful, in connection with article 5 of the Convention, for the Committee to have more detailed information on the situation in various areas in which racial discrimination might occur. Some information was given at the end of the report, on measures in the areas of housing and health, but it was insufficient.

27. With reference to article 6 of the Convention, the report provided some interesting data. In paragraph 116, for instance, there were statistics on complaints lodged for acts based on racism and xenophobia. It was reported that 1,269 complaints had been lodged between 1981 and 1989, of which 977 had been dismissed without further action, while 12 had led to convictions. That inevitably prompted the comment that the proportion of complaints shelved seemed very high compared with the number of convictions.

28. Finally, he noted that the implementation of article 3 of the Convention, concerning racial segregation and apartheid, was not dealt with in the report, even though the latter covered a period of eight years.

29. Mr. BANTON said that he would have liked the eighth periodic report of Belgium (CERD/C/194/Add.3) to have included, for the reader's convenience, a list of the various annexes referred to in paragraph 3 (c).

30. Referring to paragraph 11, he asked whether the Act of 30 July 1981 also protected citizens against discrimination - for instance, if a Flemish landlord refused to let a room to a Walloon.

31. The statistics in paragraph 116 were somewhat confusing. The total number of complaints for acts of racism or xenophobia should be given year by year so that it could be seen how many complaints had been examined, abandoned, found admissible and acted upon. He was surprised, moreover, that the number of complaints had decreased over time, whereas the number might have been expected to increase as the Act came to be better understood by those it was intended to protect.

32. He also asked for examples showing the kind of protection furnished to complainants. The case of a complaint which had been rejected because a public invitation excluding "wogs" had not been regarded as insulting raised doubts as to the effectiveness of the protections provided. Generally speaking, a total of fewer than 200 complaints a year was astonishingly low. It should be pointed out that, according to a study of the approximately 1,000 complaints per annum in the Netherlands, those complaints represented only the tip of the iceberg. It had been calculated that in the United Kingdom there were about 10,000 cases of racial discrimination a year in the recruitment to employment alone. Should there not be an investigation in Belgium of the true incidence of discrimination and the obstacles which prevented victims from making use of the remedies at their disposal? The Belgian Government might usefully learn from the experience of other European States in that respect.

33. From paragraph 25 onwards, the report dealt at length with the implementation of article 5 of the Convention. It failed to say, however, whether Belgium had eliminated racial discrimination before the courts and in respect of security of person, and, if so, in what manner. There were some remarkable omissions in that part of the report regarding economic, social and

cultural rights. How were people protected against racial discrimination in respect of their rights to free choice of employment, equal pay, trade union membership and housing? Apparently, the National Labour Council had concluded new agreements which were to become law with the issue of a new royal decree; he wished to know whether that decree had been promulgated and how it was proposed to monitor its implementation.

34. Regarding employment in the public service, dealt with in paragraphs 74 to 76 of the report, he asked whether a non-European Community alien could be employed in a subordinate position, for example in the postal service or the fire or prison services. Were there any statistics on the extent to which such services were implementing the policy for integrating aliens or their Belgian-born children into the labour force?

35. After expressing his regret that there was no reference in the report to article 6 of the Convention, he noted that there had been a call for the setting up of a national centre for the integration of immigrant communities, similar to the CRE in the United Kingdom and the LBR in the Netherlands. It would be useful for the Committee to know what had been done to follow-up that proposal.

36. Drawing attention to article 2, paragraph 1 (e), of the Convention, under which each State party "undertakes to encourage ... integrationist multi-racial organizations and movements ...", he asked for information on organizations of that kind in Belgium and the part they played in policy-making.

37. He also referred to a widely publicized case which had occurred in 1987, in which a refugee from Burundi had been murdered by "skinheads" in Louvain. He would like to know what lessons the authorities had learnt from that case and what measures had been taken to avoid a recurrence of such acts.

38. Referring finally to the provision in article 1, paragraph 2, of the Convention to the effect that the Convention did not apply to distinctions made by a State between citizens and non-citizens, he pointed out that that was not so in the case of employers and expressed the hope that the question of protection against discrimination in employment would be more amply dealt with in future reports.

39. Mr. van BOVEN said he was pleased to have the opportunity to consider the case of a neighbouring country, which would not prevent him from voicing criticisms where necessary. Previous speakers had already made detailed and

highly judicious comments, pointing out, for instance, that the previous report dated from 1983 and that an eight-year lapse was far too long. It was true that there were sound reasons for the delay, and he hoped that the next report would be submitted within the prescribed time-limit.

40. Although the report dealt very comprehensively with the de jure situation in Belgium, it left much to be desired as far as the de facto situation was concerned, although some concrete issues did emerge here and there, particularly in the section on immigration policy. The Belgian delegation had described the role of the courts and the place of the Convention in the Belgian legal system, but it would have been very useful for the Committee to be given some information on case law; some of the cases referred to in the report were puzzling, and it would be helpful if the relevant case law were better described in future reports.

41. With regard to the situation in practice, Mr. Sant'Angelo had referred to serious dilemmas facing not only Belgium but also the other countries of western Europe. In that connection, the establishment of the Office of the Crown Commissioner for Immigration Policy was a sound initiative. That body would be called upon to deal with such delicate matters as that of concentrations of migrants: should the policy to be adopted in that regard aim at distributing such persons evenly throughout the country or keeping the communities together? Paragraphs 156 and 158 of the report referred to some of the Crown Commissioner's recommendations on education and housing, and it would be useful for the Committee to be informed, either immediately or possibly in a year or two, of any follow-up to those recommendations.

42. Mr. Ferrero Costa had already spoken, in connection with article 4 of the Convention, about the problem of racist groups or organizations. On that subject, the conclusions of a report by a European Parliament commission of inquiry into fascism and racism in Europe, dating from 1985 but still relevant today, found that there was a large number of racist groups in Belgium, both in the Walloon region - Nouvelle Sparte, Ordre Noir, Front National, etc. - and in the Flemish region, where the Vlamse Blok, in particular, had made a disturbing breakthrough in the November 1991 elections after a xenophobic campaign. According to the report before the Committee some of those groups had been banned as paramilitary organizations but in 1982 a Belgian court had lifted one of those bans. The spectacular growth of movements of that kind

was a matter of serious concern. In the circumstances, what was the Belgian Government's position, with reference to article 4 of the Convention, concerning overtly xenophobic and racist groups? Of course, Belgium did not have the monopoly of such problems, which were to be seen all over Europe, in the west and the east alike.

43. Regarding the right to education, he noted that there were independent subsidized schools in Belgium, many of which were religious schools. Most of them were Christian, but were there also Islamic schools in the Muslim communities settled in Belgium and were they also subsidized? In the case of those communities, religious and racial issues overlapped to a great extent.

44. The Council of Europe, of which Belgium was a member, had recently adopted a declaration on racism and xenophobia, in which it had noted with concern that there were growing signs of racism and xenophobia in Europe, both within the European community and outside it. The Council of Europe had emphasized that it was more than ever the duty of States to combat discrimination in accordance with their commitments within the United Nations, and, in particular, under the Convention on the Elimination of All Forms of Racial Discrimination. Specifically, the Council of Europe had requested the Ministers and the Commission of the European Communities to step up their efforts to combat discrimination and xenophobia and to strengthen the legal protection of nationals of non-member States on the territory of member countries.

45. Finally, he wished to know whether Belgium was intending to make the declaration provided for in article 14, paragraph 1, of the Convention. The declaration was admittedly optional, but since the Council of Europe had requested its member States to strengthen their legal protection arrangements for persons who were victims of discrimination, it would be logical for all those who had not yet done so to make that remedy available to persons or groups of persons claiming to be victims of discriminatory practices covered by the Convention.

46. Mr. de GOUTTES thanked the Belgian delegation for its oral introduction to a report which, although late, contained much interesting information. The problems referred to by Belgium were very similar to those encountered in France, and he would have liked to ask a great many questions, but would confine himself to just a few. In particular, he would not speak about the

very important issues concerning the various communities and regions of Belgium, as they had already been mentioned.

47. His first question, relating to article 4 of the Convention, concerned domestic legislation. Paragraph 12 of the report (CERD/C/194/Add.3), which listed the offences provided for under Belgian legislation, seemed to omit two serious offences covered by the Convention, namely, on the one hand, propaganda based on ideas or theories of superiority of one race or the dissemination of ideas based on racial superiority or hatred, and, on the other, the offence known as revisionism, committed by those who disseminated historical data denying, in particular, the crimes of the Nazi regime.

48. Paragraphs 34 et seq. of the report showed how difficult it was for Belgium to solve the refugee problem. In particular, subparagraph (b) of paragraph 39 described a restriction which seemed to be based on a quota system. He would like to have details of the number of persons who had been denied entry under that restriction. Subparagraph (d) of the same paragraph concerned the administrative maintenance, in places near airports, of asylum-seekers said to have entered Belgium by irregular means. That was a problem which arose in many countries: while investigations were being carried out into the status of the persons concerned, in what kind of place were they kept and what remedies were available to them? It seemed doubtful that it could be asserted a priori, as was done in the report, that those asylum-seekers had entered the country by irregular means; such an assertion could only be made a posteriori.

49. With regard to the Islamic religion, paragraph 95 of the report mentioned a Technical Committee which had been set up on the recommendation of the provisional Council of Elders in order to find a solution to the problem of the appointment of teachers of the Islamic religion; it would be interesting to know the initial findings of the work of that Technical Committee. Similarly, had the Belgian Government had occasion to take a decision on the delicate question of the wearing of the Islamic veil in schools?

50. Regarding judicial proceedings following complaints of racist acts, the report provided comprehensive statistics; they were only figures, however, and no actual cases were described. As other speakers had said, it might be asked, for example, why there had been so few convictions when the number of

complaints was very high. Possibly the complaints were not well formulated or the plaintiffs insufficiently well-informed; there might also, as in other countries, be some reluctance on the part of the judicial authorities to prosecute and convict persons committing that kind of offence.

51. Finally, the situation of immigrants was a matter of concern to all the States of western Europe. It was interesting to note that the basic policy of Belgium in that regard was integration. However, some social indicators of non-integration were needed so that the Committee could appreciate the real situation of minority groups. Rates of unemployment, delinquency, alcoholism, drug addiction, prostitution, etc. were unfortunately, as everyone was aware, very reliable indicators of the extent of those groups' maladjustment to the rest of society, and it would be useful to have them.

52. Mr. WOLFRUM considered the recent constitutional reforms in Belgium to be particularly interesting and an invaluable means of easing tensions between the various population groups. Their implementation could be most instructive for other countries, and their content should be made known, especially to the countries encountering similar problems.

53. Mr. Ferrero Costa had already asked for details of the composition of the population in Belgium. Some general information was provided in that regard, but no details were given about the smallest groups such as, for instance, the German-language group, whose situation had been greatly improved by the recent reforms, or gypsies and persons from former Belgian colonies, whose situation was not mentioned.

54. Judging from the content of paragraphs 21 and 22 of the report (CERD/C/194/Add.3), it was with considerable reluctance that Belgium considered dissolving organizations that were contrary to article 4 of the Convention. The report was rather difficult to understand in that connection; in particular, why was Belgium, which was prepared to restrict freedom of speech, not prepared to impose the same restrictions on freedom of association? He also wished to know whether the authorities were able and willing to take action, where necessary, against certain political parties.

55. Had the Belgian Government made efforts, within the European Community, to combat racism everywhere? It had been affirmed at the beginning of the meeting that the fight against racial discrimination was a common concern and a joint responsibility: was Belgium prepared to invoke article 11 of the

Convention to draw attention to violations committed by other States, and, for instance, to use that means against certain countries which, in Europe itself, did not comply with the Convention?

56. Mr. DIACONU said that Belgium's experience was particularly interesting; its system of regions and communities with their own deliberative and executive bodies made it a State that was no longer unitary but was not quite federal. The reforms described in the report showed that Belgium was undergoing constant change and that it was a laboratory whose achievements, particularly from the standpoint of human rights, could be useful in some ways to others.

57. The Convention had been adopted in 1965; since then, many events had occurred in Europe and throughout the world, and some of them had prompted reactions in Belgium and elsewhere. Migratory flows and the arrival of large numbers of foreigners had had a significant impact; the elections held recently in Belgium had been highly charged and it was necessary, in such a political climate, to take action to guarantee human rights and non-discrimination. The various regions and communities had direct legislative powers that were so broad that there might be discrepancies between them. One community might adopt a more advanced system than another and he therefore wished to know how the Belgian State intended to ensure that there would not be unduly great differences or incompatibilities between the racial discrimination provisions applied in the three regions.

58. The question of the banning of organizations advocating discrimination had been mentioned. In that connection, article 1, paragraph 4, of the Convention did authorize "positive discrimination" in favour of certain groups under certain conditions; were there any provisions of that kind in Belgium, and for the benefit of which groups?

59. Finally, the very interesting question of different treatment of nationals of European Community countries and other aliens had been raised. It was worth noting that, from a legal standpoint, the countries of the Community would increasingly constitute a single State entity, and it was conceivable that by the year 2000 the periodic reports would be submitted by the Community itself rather than by its member States.

60. Mr. ABOUL-NASER, returning to the idea of joint responsibility referred to by Mr. Wolfrum, said that the provisions of article 2, paragraph 1, and article 11, paragraph 1, of the Convention, taken in conjunction, placed

States parties under the obligation to draw the Committee's attention to situations elsewhere which they regarded as violating the Convention. Belgium must therefore be asked not only whether it intended to make the declaration provided for under article 14, but also, given its determination to report human rights violations in Iraq to the Security Council, whether it would give the same attention to other cases of human rights violations, especially cases of racial discrimination, occurring in Europe and other regions.

61. Mr. SONG Shuhua asked whether the Belgian customs authorities took discriminatory action against refugees according to their region of origin, and to which legal provisions those authorities were subject when they committed violations in that regard. He also asked what differences there were between the situation of nationals of States members of the European Community and that of nationals of other States, in respect of employment, living conditions, etc. Were those differences the cause of conflicts between those two categories of aliens?

62. Mrs. SADIO ALI wished to know, firstly, how many Zairian exiles there were in Belgium and what their status was and, secondly, whether there was any provision for human rights education and training programmes for magistrates, police officers and other public officials dealing with immigrants.

63. Mr. AHMADU asked whether Zairian nationals in Belgium were treated in the same way as other aliens, or differently. Referring to the difficulties encountered by Nigerians in obtaining a visa for entry into the BENELUX countries, and the fact that it was easier to obtain it from the Netherlands Embassy than from the Belgian Embassy, he wondered whether it was a question of covert discrimination or of an irrational division of labour.

64. Mr. RECHETOV thanked Belgium for the realistic, self-critical approach which its report revealed. He endorsed the view of Belgium as a sort of laboratory for the transition of a State from a unitary to a federal structure and he pointed out that the Belgian experience could have avoided bloody conflict in a certain European State.

65. He asked the Belgian delegation, considering the fact that its country did not recognize the existence of national minorities, what Belgium's attitude was to the obligations deriving from the many provisions of international legal instruments concerning the rights of national minorities. He associated himself with earlier speakers' requests for information on specific case law.

66. Mr. YUTZIS said he wondered what exactly was meant by the second part of paragraph 22 of the report. He would like the Belgian delegation to state clearly whether or not the judicial authorities could order the dissolution of associations advocating racism and xenophobia.

67. Mr. GARVALOV said that Belgium's experience was of great interest to the European countries currently undergoing far-reaching changes. He would like to know whether international human rights instruments were directly applicable in Belgian domestic legislation and, if not, what kind of juridical procedure, if any, was provided for in order to ensure their implementation. He did not understand how ministers of religion could be appointed when there was a separation of the Church and the State. He was also surprised to see, among the countries that had not made the declaration provided for under article 14 of the Convention, a European State which was a member of the Council of Europe and had ratified the European human rights Convention and recognized the competence of the European Court. He hoped that Bulgaria, which had recently been admitted to the Council of Europe, would recognize that competence and would make the declaration under article 14 of the Convention. In conclusion, he pointed to the need to develop a definition of the term "minorities".

68. The CHAIRMAN said that Committee members' questions and comments on the report of Belgium showed how interested they were in the very detailed Belgian report, and trusted that the Belgian delegation would be kind enough to respond.

69. He also announced that he would be distributing to the members of the Committee the text of a study entitled "Actualité du Comité des Nations Unies pour l'élimination de la discrimination raciale" which Mr. de Gouttes had published in the Revue générale de droit international public, 1992.

70. Mr. de GOUTTES urged Committee members likewise to circulate any articles they might have published.

The meeting rose at 5.55 p.m.

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PROVISIONAL
For participants only

CERD/C/SR.940
10 August 1992

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 940th MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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under article 9 of the Convention (continued)

Fifth, sixth, seventh and eighth periodic reports of Belgium (continued)

Eighth, ninth, tenth and eleventh periodic reports of Greece

Corrections to this record should be submitted in one of the working
languages. They should be set forth in a memorandum and also incorporated in
a copy of the record. They should be sent within one week of the date of this
document to the Official Records Editing Section, room E.4108, Palais des
Nations, Geneva.

The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Fifth, sixth, seventh and eighth periodic reports of Belgium
(CERD/C/194/Add.3) (continued)

At the invitation of the Chairman, Mr. Reyn, Mr. Santangelo,
Mr. Van Craen and Mr. Wilmotte (Belgium) took places at the Committee table.

Mr. VAN CRAEN (Belgium) welcomed the opening of a dialogue between his country and the Committee, a dialogue which he hoped would lead to better mutual understanding. A number of members had asked for detailed statistics on points arising from the report: although his delegation could not provide them at the current session, it would be glad to supply them in writing at a later stage. The delegation would, of course, be most interested to hear the Committee's final conclusions and recommendations on the report.

Mr. WILMOTTE (Belgium) said that, for the sake of clarity, he would reply to questions raised according to subject, since the same questions had been put by more than one member.

One of the more important questions had concerned the relationship between international treaties on human rights and fundamental freedoms and Belgian domestic law. In principle, once Belgium had signed such a treaty, it would become law following ratification by Parliament: the difficulty arose over the fact that certain provisions of the treaty would automatically become directly applicable (or "self-sufficient") in Belgian law, whereas others would not. Where it was clearly stated in the text of the treaty that the provision concerned had a direct effect, it could be invoked before any Belgian court. However, where there was no such indication, it was for the courts to determine whether or not the provision was directly applicable.

The principle governing the issue was clear: jurisprudence dating from 1971 had established that wherever a provision of an international treaty had a direct effect, not only was it applicable in Belgian law, but judges would be required to implement it even if a subsequent law were to conflict with it. Thus, an adjudication by the Supreme Court in 1984 had recognized that virtually all the provisions of the Covenant on Civil and Political Rights were directly applicable in Belgian domestic law.

Clearly, however, most of the provisions of the Convention with which the Committee was concerned were not "self-sufficient", and thus the Belgian legislator had to take certain measures to give them direct effect. One such

measure had been the 1981 Act on the prevention of acts of racism and xenophobia, which had been discussed the previous day. He could assure members of the Committee that all the provisions of treaties on human rights and fundamental freedoms would be made directly applicable under Belgian law through the adoption, where necessary, of special legislation of that kind.

Another question had concerned the status in Belgium of nationals of European Community countries as compared with that of nationals of other States. Under the Treaty of Rome, European Community law was supranational, which meant that where international treaties were concerned sovereignty was transferred from the Belgian Government to the supranational authority vested in the European Community. Thus the right of workers to freedom of movement was recognized only for nationals of European Community States, and not for nationals of other States. Under the Treaty of Maastricht, the same principle applied to the right to vote and to stand for election: only nationals of European Community States were recognized as enjoying such rights, although there was nothing to prevent individual member States from conferring them on nationals of other countries resident in their territory. In his view, that situation did not constitute discrimination, but rather a system of differential treatment which was justified by the need to give priority to the objective of furthering European integration.

In reply to the question as to what was meant by "local elections" (para. 60 of the report), he said that the reference was to elections held in municipalities or small local communities as distinct from, on the one hand, national parliamentary elections, or on the other, regional or European Community elections.

In reply to the question on constitutional freedoms, article 128 of the Constitution enshrined a fundamental principle, namely that any alien on Belgian territory should enjoy the protection normally accorded to persons and property. Derogations from that principle implied in the phrase "save for the cases prescribed by law" were in fact extremely rare, the most significant one being that relating to the right of aliens to enter or leave Belgian territory. It was only to that extent that a discriminatory regime operated.

With regard to political, social and economic rights, discrimination was now practically non-existent. Previously there had been some discrimination in regard to social security benefits against Turkish and Moroccan nationals who had lived in Belgium for most of their lives, but that discrepancy had now

been remedied. Aliens enjoyed exactly the same rights as Belgians where participation in trade union activities was concerned. They could not only vote in works councils and health and safety committees, but could also be elected to such bodies: the latter was an important point, since in Belgium the trade unions played an active part in framing social legislation through collective labour agreements.

On the subject of work permits, any foreigner on Belgian territory had to obtain prior authorization before taking up employment, a requirement which did not apply to European Community nationals or to persons with recognized refugee status. In regard to the penalties imposed for failure to obtain a work permit, a distinction should be made between the self-employed or independent worker, who would be individually penalized, and the salaried worker: in the latter case, it would be the employer, not the employee, who was penalized.

A number of questions had been raised concerning Belgian practice in regard to refugees, notably under the 1991 "double percentages" Act. Under that Act, it was assumed that, on the basis of a twofold criteria, nationals of certain States could be deemed not to qualify for refugee status as defined in the Geneva Convention. The first criterion was whether, in the course of the preceding year, nationals of the country concerned had constituted more than 5 per cent of the total number of asylum-seekers, and the second criterion was whether fewer than 5 per cent of such nationals had been granted refugee status. It was important to note, however, that if the individual applicant could produce evidence that his life and liberty had been endangered in his country of origin, the assumption would be reversed, and the individual would qualify for refugee status. It should also be noted that even if the applicant came from a country whose nationals did not a priori meet the definition of a refugee under the Geneva Convention, he would nevertheless be entitled to appeal on the same basis as other asylum-seekers.

He was not yet able to provide any statistics, since the measure in question had only become law in July 1991, and in any event was only applicable for a one-year period. An application for the repeal of the measure was currently under consideration, and as a result the Belgian authorities were being very cautious about implementing its provisions. It should be realized that the law would only be applied in association with other procedures, and not in isolation.

Where the meaning of "irregular entry" was concerned, Belgian law differentiated between asylum-seekers requesting refugee status according to whether or not they were in the possession of the necessary documents, namely passports or visas. Persons who could present the proper documentation would be allowed into the country and would then go through the necessary formalities, but those who could not were subjected to a preliminary investigation at the border. If the investigation found that the application was clearly abusive, the asylum-seeker would be refused entry, but if it found that his case deserved further consideration, he would be admitted.

That system had led to a situation in which asylum-seekers had been delayed in transit zones for long periods, often under deplorable conditions. Accordingly, it had been decided to set up reception centres at airport border points, and in 1991 legislation had been passed limiting the duration of detention in such centres to a maximum of two months. Thus, if after two months the applicant had not been returned to his country, or if consideration of his case had not been finalized, he would automatically be admitted.

With regard to discrimination against asylum-seekers at the border, frontier Customs officials and law enforcement agents had no decision-making powers: their function was simply to take note of applications and to transmit them to the authorities. It was true that complaints had been made to the Belgian Government of discriminatory treatment on the part of certain frontier officials, and an inquiry was now under way. In the meantime, steps had been taken to improve the training of such officials, so that their role was more clearly defined.

In reply to further questions, he said that out of Belgium's total population of some 10 million, there were 64,000 German-speaking Belgian nationals. In 1991 there had been almost 14,000 Zairian nationals resident in Belgium, a figure which represented only 1.5 per cent of the total resident foreign population, although in view of Zaire's historical links with Belgium a higher percentage might have been expected. In the year 1988, Zairian nationals had accounted for 10 per cent of all asylum-seekers: in 1989 the figure had been 10 per cent, in 1990, 8 per cent, and in 1991, 13 per cent. Zairians were accorded the same treatment as asylum-seekers who were nationals of other non-Community States, but in view of the events that had taken place in the country in 1991-1992, the Belgian Government had decided to suspend any

removal measures against Zairian nationals (with the exception of those guilty of offences under the ordinary law) pending clarification of the situation.

On the matter of visas required by foreign nationals to enter Benelux countries, Belgium's policy was identical to that of its Benelux partners, namely the Netherlands and Luxembourg. The regulations governing the issue of such visas were the same in all three countries, apart from the fact that applications to enter, for example, the Netherlands, would normally be handled by Netherlands consulates and embassies. The treatment of applicants would vary only to the extent that the issuing of visas might take longer in some cases than others, owing to local conditions.

Mr. SANTANGELO (Belgium) said it had been asked whether the 1981 Act on the prevention of acts of racism and xenophobia applied also to Belgians: the answer was in the affirmative. Thus, a court had recently convicted a youth for using the term "dirty Belgian". If the action concerned involved the race, colour or national or ethnic origin of either Belgians or naturalized Belgians, the Act would apply. It had been introduced partly in order to combat acts of racial discrimination committed against Belgian Jews.

While the requirement that the action concerned should be public might be seen as constituting a restriction, the intent of the law was not to eliminate racism, but rather to punish acts of incitement to racial hatred and violence, acts which would necessarily be public in character. For example, a café in Namur had recently refused to serve a Moroccan national, but since there were no witnesses, the individual concerned could take no action. When he had later returned with witnesses and the same incident was repeated, he had brought an action, which had subsequently been allowed on appeal to the court in Liège. In Belgium, as in most other countries, the principle of freedom of expression was sacred and was enshrined in the Constitution, and great caution had to be exercised in allowing any derogation from that principle. Thus, the Act contained stringent requirements as to proof of racist or xenophobic acts.

Recapitulating the facts of a case in which a war veterans' association had issued an open invitation to a social event in its newsletter, using the equivalent of the expression "Everyone welcome; no wogs" ("bougnouls"), he said that for some reason the preliminary investigation conducted at the time had found that there was no evidence of racist intention. It had been an isolated case, however, and subsequent court rulings had found that the term "bougnoul" was racist. Anyone using it could now be prosecuted.

Regarding associations manifestly and repeatedly promoting or inciting racial discrimination, proof of intention was again required. Legal proceedings could be brought only against physical persons, as opposed to legal entities, the intent of the legislators being to undermine the existence of such associations through action against individual members guilty of racist acts or incitement. There was, however, a legal provision dating back to 1934 providing for the dissolution of paramilitary associations. Various racist and paramilitary associations had been dissolved and individual members convicted under that law.

The provision of a five-year period before an association could bring legal proceedings was intended to prevent the establishment of an association in connection with a particular case.

In response to a question by Mr. Banton about the 1981 Act, he said that it was intentionally very broad in scope so as to empower the judiciary to deal with all situations referred to it. For instance, although "revisionism" and "negationism" were not explicitly referred to in the Act, he could quote the example of a French historian who had been condemned twice for propagating his "negationist" theories of history in Belgium.

A Senate proposal to amend the 1981 Act had been introduced at the beginning of 1992, with a view to making it more effective. The proposed amendments included stricter penalties; making the refusal to allow occupation of a dwelling a punishable offence; broader provisions for prosecution in the event of discriminatory offers of services or publicity; and new provisions concerning the refusal to employ a person, or dismissal, on grounds of origin, race, colour and so on. The prohibition of discrimination in the workplace was already provided for under collective labour agreements. In all cases, it should be noted that proof of racist intention must be adduced.

On the question of minorities, Belgium, with its current population mix, did not recognize minorities as such. Associations and organizations representing particular groups could, of course, be formed and were encouraged, even receiving subsidies, provided their activities were not contrary to the interests of the general community. Such associations and organizations were very active in Belgium. The general emphasis in Belgium, given the present trend towards a multicultural society, was to encourage individual integration into the community. In more general terms, Belgium

would have no problem in ratifying an international convention on minorities, especially since the terminology proposed referred to individuals belonging to minorities.

Any State could grant certain rights to its nationals that it did not grant to non-nationals, the justification being that such rights - particularly certain political rights and those concerning military service - were based on the special link between nationals and their State. Provisions regarding affirmative action or what Belgium preferred to call "positive action" were not intended to give foreigners certain advantages not enjoyed by Belgians, but to ensure that all persons could take an active part in society. Such action was taken, for example, in employment.

With regard to Mr. Banton's questions about paragraphs 74 to 76 of the report and access to public service posts, proposals giving non-nationals access to certain established posts in the civil service had not yet been adopted, but at the national level, non-nationals could hold public service posts under renewable contracts. Posts at the Community level were open to everyone irrespective of nationality. A growing number of public service departments or "parastatal" authorities, such as the public transport authority, were open to non-nationals, and recent measures had been taken to open up recruitment in such areas as the police auxiliary forces. Representation of foreigners through advisory councils, described in section B of the report, was actively ensured at the Community and local levels, ensuring participation by foreigners in local management, either as individuals or as members of associations.

On the subject of education, there were unfortunately some schools attended primarily or even exclusively by non-Belgians, as a result of a concentration of foreign residents in the areas concerned. Steps had been taken in recent years to improve the situation, not specifically to "deconcentrate" the areas in question but to promote equality of educational opportunity and improve teacher training. The Community authorities, which were responsible for education, encouraged intercultural education in all schools, particularly by introducing intercultural subjects into the curriculum.

Special training programmes had been introduced in recent years for administrative personnel, such as members of the police force and local authorities, to make them more sensitive and responsive to people with different lifestyles and cultural backgrounds.

With regard to the Islamic religion, the report requested of the Council of Elders referred to in paragraph 95 of the report was currently being examined, and it was hoped that the outcome would resolve the problems concerning the appointment and payment of ministers of the Islamic religion on the same footing as those of the other religions, in conformity with Belgium's pluralistic policy. Those problems had arisen because there had until recently been no recognized authority representing all Islamic communities which the Government could consult. There was at present one subsidized Islamic school, a nursery school, and it was expected that the number would increase in the future. There was no official ban on wearing the Islamic veil at school, the only possible exception being schools in which pre-existing rules prohibited the wearing of any kind of distinctive religious emblem or dress, of which parents would have been aware before enrolling their children. Such rules must, of course, be in conformity with anti-racist legislation.

In the health sphere, measures had been taken to facilitate relations between foreign patients and medical staff, such as the provision of interpretation in hospitals and special training for medical personnel.

Low-cost housing was available for all underprivileged sectors of society without discrimination, and tenants' associations were encouraged.

In response to questions about the activities of extremist parties, he said that extreme racist groups were covered by the 1981 Act, but that, in general, the Government's policy was to tackle the problem by seeking to influence those who voted for such parties, fostering attitudes of tolerance and understanding. On the subject of the appointment of a Crown Commissioner for Immigration and the creation of a national centre for the integration of immigrant communities and against discrimination, a draft law had already been through a first reading and it was hoped that the centre would commence operation in 1993. It would be responsible for research and documentation and would provide advice and make recommendations to the authorities on the application of the 1981 Act and any other means of action against all forms of racial discrimination, an example being the application of a code of conduct

in the workplace. It would help to publicize the 1981 Act both in the Community at large and among those professionally concerned with implementing national legislation and the International Convention on the Elimination of All Forms of Racial Discrimination, such as judges and magistrates. It was to be directly accountable to the Office of the Prime Minister, to which it would be required to report annually, and would also be the body responsible for reporting to the Committee on the Elimination of Racial Discrimination.

Mr. VAN CRAEN (Belgium) said that he would be responding to some of the questions of a more general nature raised by Committee members. On the subject of the State reform, he was gratified to hear the Committee's laudatory comments, although it must not be forgotten that the reform in itself did not provide a direct response to all the issues dealt with by the Committee. The Belgian State was responsible to the international community and must guarantee the fulfilment in practice of all its commitments through all the autonomous structures that had been set up. Regarding the manner in which the system operated in practice, there were three Communities, the Flemish, the Walloon and the German-language Community, each of which had its own powers in regard, broadly, to culture, education and policies concerning groups of persons such as young people, the elderly, etc. The German-language Community, like the other two, was not considered to be a minority, but had equivalent powers and mechanisms. Then there were three Regions: the Flemish Region, the Walloon Region and the Brussels-Capital Region, which was bilingual. All those entities had their own mechanisms similar to those operating at the national level, with an executive power, a legislative power and a certain degree of financial autonomy. The whole system was based on the fundamental concept of "linguistic territories", of which there were four - the Flemish, Walloon, German-language and bilingual territories. It was in the frontier areas between those linguistic territories that problems might arise, and it was there that special arrangements had been devised to ease or facilitate transition and adaptation from one territory to another.

Several questions had been asked about how Belgium's commitments towards the international community were guaranteed in such a context of divided authority. Belgium complied fully with all its commitments and had internal mechanisms for that purpose. Its policy could be summed up in one word: "dialogue", which was a continuing process operating between the Communities and the Regions and between them and the Belgian State. Consultation and

coordination committees (comités de concertation) operated at all levels for that purpose. Of course, not all problems could be resolved through dialogue, but the Court of Arbitration had overall competence to deal with disputes. There could be no doubts about the Belgian State's responsibility for guaranteeing all its commitments to the international community.

Much had been said about Belgium's membership of the European Community, which was of long standing. In fact, Belgian foreign policy in respect of human rights and racial discrimination was in great part determined by participation in the Community and its institutions. In addition, Belgium had been a member of the Commission on Human Rights from 1986 to 1991, and was now represented in that body by an observer, and as a member of the Security Council, it had voted in favour of many resolutions condemning human rights violations.

With regard to article 14 of the Convention, and in particular its paragraphs 1 and 2, Belgium had shown its willingness to respond positively by initiating (admittedly lengthy) procedures for incorporating those provisions in legislation. It should be pointed out that the European Community itself provided individuals with a variety of remedies in the event of grievance, including recourse to the European Court of Human Rights.

Outside the framework of the Community, an efficient system of protocols was available whereby financial arrangements with States could be suspended if human rights were abrogated.

In conclusion, he said that acceptance of the wider concept of European union would do much to help eliminate any discrimination against foreigners, a question that had also been raised in the course of the discussion.

Mr. FERRERO COSTA said that, as Country Rapporteur, he wished to compliment Belgium on the thoroughness of its eighth periodic report and the detailed replies given orally by its representatives. However, some points could usefully be amplified. In particular, more statistics on population would be welcome in the next periodic report, and greater information on complaints procedures: it was very important, for instance, to know more about the substance of complaints and the apparent discrepancy between the number of complaints and the number of convictions, and also about the way in which courts interpreted the Convention.

He welcomed the details given by the representatives of Belgium on the functions of the national centre for the integration of immigrant communities

and against discrimination and on the proposed amendments to the Act of 30 July 1981. He pointed out that the Act did not cover all the obligations arising from the Convention, and expressed the hope that the Committee's views would be made known to legislators.

Little attention had been paid in the report to minorities which were not French- or Dutch-speaking, in particular to the ways in which they could ensure respect for their rights, or to the status of foreigners in a country in which some 9 per cent of the workforce was of foreign origin.

Mr. ABOUL-NASR said that he wished to correct any misapprehension that he was accusing Belgium of double standards in connection with human rights. What he had meant in his statement the previous day was that the Security Council, of which Belgium was a member, had been accused of such double standards - by the Secretary-General among others. Although the country itself had a good human rights record, it had an obligation under the Convention to use its influence to prevent the occurrence of violations elsewhere.

Mr. RECHETOV thanked the Belgian representatives for their candid replies to the Committee, and particularly to his query concerning the application of international human rights instruments in Belgium. Noting that the ratification process for such instruments appeared to be lengthy, he would like to know whether Belgium intended to assume an obligation under article 14 of the Convention.

Mr. WILMOTTE (Belgium) said that population statistics and information on such issues as complaints procedures and actual cases would be provided by the end of 1992, well in advance of the next periodic report.

With regard to article 14, he had been informed by his country's Ministry of Foreign Affairs that relevant legislation was pending.

On relations with South Africa, he said that Belgium had consistently pursued a common policy of opposition to apartheid with the other members of the European Community.

The proposed amendments to the 1981 Act were still at the stage of discussion in Parliament, but the Committee's comments would be duly noted and Parliament would be informed of the obligations arising under the Convention.

Mr. REYN (Belgium) said that he would need to consult with his Government to clarify Belgium's position on article 11 of the Covenant, although the existence of an obligation under that article was acknowledged.

Mr. Reyn, Mr. Santangelo, Mr. Van Craen and Mr. Wilmotte (Belgium) withdrew.

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1)

At the invitation of the Chairman, Mr. Ioannu and Mr. Iliopoulos (Greece) took places at the Committee table.

Mr. IOANNU (Greece) said that the implementation of the Convention had already been outlined in earlier periodic reports, but that it would be useful to comment on the judicial machinery available in respect of racial discrimination. In particular, mention should be made of the provision in article 28, paragraph 1 of the Constitution, introduced in 1975, which affirmed that international instruments to which Greece was a party not only formed part of the law of the land, but took precedence over domestic legislation. In the event of a conflict, a judge must apply the relevant international provisions.

With the ratification of the Convention on the Elimination of All Forms of Racial Discrimination in 1970, judges were called upon to apply all of its provisions, since international instruments always took precedence over domestic legislation. Thus a legal framework existed under which violations of the Convention were treated as criminal offences. However, as Greek society was traditionally tolerant towards other races and groups, the legal machinery had not been put to the test, and no complaints of discrimination had been submitted to the national courts. In the event of any complaints arising, they would be dealt with by the Office of the Attorney-General.

With regard to South Africa and the sanctions against that country, Greece had ensured that its domestic legislation complied with Security Council resolutions. Similarly, as a member of the European Economic Community, it had fully complied with all action taken with respect to South Africa. Greece had ratified most international conventions prohibiting discriminatory behaviour and was in the process of establishing a separate administrative body to deal with human rights in general. Since 1985, it had accepted an individual's right to appeal to the European Commission of Human

Rights, but few complaints had been brought before the Commission. He was sure that, with the help of the new human rights body, Greece would be in a position to expedite the submission of its reports.

Mr. WOLFRUM, speaking as country rapporteur, said that Greece had submitted its eighth, ninth, tenth and eleventh reports in a single document, a document which did not fully comply with the Committee's guidelines for the preparation of reports. The information provided on judicial and administrative measures was limited and the information on the demographic composition of the population was only partial. The report failed to state how many foreigners were living in Greece and what their status was under Greek law.

He drew the Committee's attention to paragraphs 5 to 7, which dealt with constitutional matters, and to paragraph 8, which dealt with accession to international instruments, and referred to the safeguards for individuals and organizations included in the Greek Constitution. The report stated that, for the purpose of uniformity with the Convention, the prohibition of discrimination based on race had been added to the text of article 5 of the 1975 Constitution and Parliament had established a special regime for the punishment of acts or activities which could give rise to racial discrimination.

Legislation provided for imprisonment for a maximum term of two years or a fine. Cases of propaganda or activities of any nature giving rise to racial discrimination were also punishable by law. According to his information, article 192 of the penal code provided for a term of imprisonment of up to two years for anyone openly or otherwise disturbing the public peace by fomenting violence and division among citizens. He would like to know whether any cases had been decided under that provision and what specific charges had been brought against Doctor Sadik Ahmet and Mr. Ismail Serif in January 1990. Similarly, he inquired why no action had been taken to punish those who had initiated riots against members of the Turkish minority in 1990.

Greece was a party to the European Convention on Human Rights, to the second, third and fifth Additional Protocols, to the International Covenant on Economic, Social and Cultural Rights and the European Social Charter. It had shown its respect for the value of the human person by becoming a party to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Prevention and

Punishment of the Crime of Genocide and the Slavery Convention. He believed that the Greek legal system was quite open to the implementation of international law, although paragraphs 10 to 12 of the report did not fully explain how the system worked. Under article 28 of the Greek Constitution, as a result of ratification and entry into force according to the established procedure, the generally recognized principles of international law and international conventions formed an integral part of internal Greek law and took precedence over any contrary provision of that law. The report indicated that judicial decisions had referred to that basic provision less in connection with possible conflicts with internal law than to emphasize that international law took precedence. The report failed to provide detailed information on that point.

It would have been useful for the Committee to know whether courts or administrative bodies had acted on the basis of the Convention on the Elimination of All Forms of Racial Discrimination, or other international human rights instruments. If so, the report should have included details of any relevant case or cases and explained whether the international instrument had been used to modify Greek law or had served directly as a basis for action. He drew the attention of the representative of Greece to the fact that, under article 9 of the Convention, States parties had an obligation to report not only on their legal system but on the relevant practice of courts and administrative bodies.

Where the implementation of article 2 of the Convention was concerned, he complimented Greece on the abolition of a practice which had been previously criticized, namely the refusal to appoint Christian teachers of the Catholic faith to work in public primary schools. Act No. 1771 of 19 April 1988 authorized the appointment of persons of any religion or faith as primary school teachers in both nursery and primary schools. It would have been interesting to know how many teachers of non-Christian orthodox faith had been appointed and to which religion or faith they belonged.

In connection with the same articles, it would be useful to have precise figures for Muslims living in western Thrace. That minority, 50 per cent of whom were of Turkish ethnic origin, seemed to be dissatisfied with their legal position and had complained of discriminatory practices against them. Letters had been received by members of the Committee and although they had not been official communications under article 14 they had, nevertheless, influenced

the members. Greek Muslims complained of harassment by Greek authorities, bureaucratic obstacles to obtaining permits for building and repairing houses, refusal of loans from State-controlled banks, to name but a few problems. Such complaints needed to be looked at in more detail. The conclusion of the Treaty of Lausanne of 1923, which had ended the Greco-Turkish war, had been accompanied by the signature of a convention providing for a compulsory exchange of population. However, two population groups had been excluded: namely Greeks living in Constantinople and Turks living in western Thrace. Since 1923, the percentage of Turks had dropped from 64 per cent (according to the Turkish authorities) or 51 per cent (according to the Greek authorities) to 33 or 36 per cent. So, at least 300,000 people of Turkish ethnic background apparently emigrated since 1923. He would like to hear an explanation for such a mass emigration.

The legal system of Greece did not seem fully to provide for equal treatment for all Greek nationals, since, under the Greek nationality Act of 1955, a person of non-Greek ethnic origin who left Greece, not intending to return, could be declared to have lost Greek nationality. It was not clear how the authorities could establish such an intention. He was also concerned that such a decision could be made by the Minister of the Interior without a hearing, judicial review or the right of appeal. He would like to know how many persons had lost their nationality under the provision.

Greek officials seemed reluctant to use the term "Turkish minority" and to prefer the term "Muslim minority". The belief that the word "Turkish" referred only to citizens of Turkey and not to citizens of Greece was widespread. He would like to know whether it was true that most Turkish associations in western Thrace had remained closed following a High Court decision in 1988 ordering their closure on the ground that the use of the term "Turkish" to describe Greek Muslims endangered public order.

The report provided very little information on the implementation of article 2, paragraph 1 (b), of the Convention, and on article 2, paragraph 2, of the Convention. With regard to the latter provision, the report stated that the teaching of the rules of Islam and of the Turkish language was part of the curriculum in 260 primary and secondary schools in Thrace, and that such instruction was free of charge. However, the Turkish minority had

complained of restrictions on its religious freedom. It was, in particular, concerned about the appointment of muftis by the Minister of Religious Affairs.

The information on the school system needed to be supplemented. He would like to know how many of the schools where Turkish was taught were secondary schools, how many students were enrolled, whether it was necessary to pass a Greek language test for admission, and whether the true needs of Turkish speakers were being met.

With regard to the right to freedom of movement and residence within the borders of Greece, he would like information on the degree to which western Thrace was a restricted area and on the ensuing effect on the inhabitants of the area, especially Pomaks and members of the Turkish minority. Was it true that the Pomaks in the Rhodopes mountains were virtually living under military surveillance. Further information was also needed on the confiscation of passports, temporarily or permanently. The same applied to complaints that members of the Turkish minority were experiencing difficulties in obtaining a licence to buy or sell land, houses or businesses. Statistics were also needed for the percentage of members of the Turkish minority who owned property, in view of complaints from the Turkish community that land was frequently confiscated from Greek Turks but rarely from other Greeks.

Finally, further information would have been appreciated on the implementation of article 5 (c) of the Convention. The report contained little information on the electoral system and the number of members of minorities who were members of Parliament. He would also like to know what Greece's position was towards the former Yugoslavia and, particularly, to the demands of self-determination made by the Republic of Macedonia.

The meeting rose at 1.10 p.m.

70.
PROVISIONAL
For participants only

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 941st MEETING

Held at the Palais des Nations, Geneva,
on Tuesday, 4 August 1992, at 3 p.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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Consideration of reports, comments and information submitted by States parties
under article 9 of the Convention (continued)

Eighth, ninth, tenth and eleventh periodic reports of Greece (continued)

Tenth and eleventh periodic reports of Costa Rica

Corrections to this record should be submitted in one of the working
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Nations, Geneva.

The meeting was called to order at 3.10 p.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Eighth, ninth, tenth and eleventh periodic reports of Greece (CERD/C/210/Add.1)
(continued)

1. Mr. SONG Shuhua congratulated the Greek delegation on the logical and concise report submitted by its country (CERD/C/210/Add.1), but said he would have welcomed additional information on a number of points. He wondered whether the three ethnic groups mentioned in paragraph 21 of the report were all Muslim, what proportion they represented in terms of the total population of the country and what their birth and death rates were. He also wondered what their economic situation was as compared with other population groups, whether implementation of the economic programme for Thrace referred to in paragraph 20 had begun and whether there were any Yugoslav or Albanian immigrants in Greece and, if so, what their status was.
2. He noted with satisfaction that universities and higher educational establishments had included study of the Convention in their curricula. He asked, in view of the waves of emigration in recent years, what the policy of the Greek Government was with regard to immigration. Were all immigrants treated in the same way, particularly at border posts and, if discrimination existed, what measures were being taken to combat it?
3. Mr. DIACONU stressed how important it was to know about the population structure of a country in order to form an idea of the real situation there in terms of discrimination, and he expressed the view that the Committee should make a recommendation to that effect to States parties. He wished to know whether the Muslim minority of Thrace was represented in Parliament and what role it played in political life. He also asked what the situation was with regard to the Albanian and Macedonian minorities?
4. Referring to paragraph 46 of the report, he wondered whether the fact of allowing a religious authority, in the circumstances the Muslim religious leader, to exercise judicial responsibility was not a source of discrimination and of many problems. He would moreover have welcomed further information regarding the matter of culture and education for non-Greek populations. It was not enough to say, for example, that Turkish language instruction was part of the curriculum. Finally, he expressed the hope that the question of

minorities, which was complex to say the least in that part of the Balkans, would not be used for political ends in the future.

5. Mr. RECHETOV merely wished to point out to the Greek delegation that there were many different points of view as to whether or not the sensitive problem of self-determination should be considered in the framework of human rights protection.

6. Mrs. SADIO ALI was concerned by the fact that under article 19 of the Greek Nationality Act, citizens, who were not of Greek ethnic origin, particularly Greek Muslims, could be deprived of their nationality, without any effective right of appeal if they went abroad to work or study. With regard to Macedonians, she wondered whether it was correct that in August 1990, the Governor of a district in the region had organized cultural festivities in which a Macedonian group had been due to take part and whether it was true that Greece did not recognize the Macedonian language, regarded as a dialect. She requested information on the language in which Macedonians received primary education. She also stated that it would be useful to know the names of the countries to which the bilingual persons referred to in paragraph 24 of the report belonged.

7. Mr. ABOUL-NASR began by pointing out that no State could claim not to have any problems with regard to discrimination. It was the Committee's responsibility to help overcome such problems. The question of the application of the provisions of Islamic law to certain aspects of civilian life was not of great concern, since Greece was far from being the only country in the world where such provisions were put into effect. With regard to the question of language, a problem only arose when an individual was deprived of the opportunity to learn his mother tongue. As far as he was aware, foreigners living in Greece, and in particular Egyptians, were experiencing no problems.

8. However, the report of Greece needed some clarifications. Firstly, it seemed to be confusing Turks and Muslims, a confusion which was widespread but none the less regrettable in that part of the Balkans. The term "Muslim" referred not to a nationality but to a religion. The breakdown of the Muslim minority given in paragraph 21 of the report was unclear: did the 50 per cent of persons of Turkish origin have Greek nationality? Who were the Pomakes, and were the Gypsies all Muslim? Did they have the same rights and duties as other citizens and, in particular, were they required to undergo military service?

9. Furthermore, what was the situation of the Albanian minority living in Greece? He wondered why it was not mentioned in the report and said that if it was true that Greeks were treated differently according to their origin, the Committee should devote serious attention to that matter.

10. Mr. de GOUTTES thanked the Greek delegation for its statement which was brief but went into considerable legal detail. Noting that for various historical, political and geographical reasons, the world expected a great deal from Greece in the area of human rights, he stated that there were some gaps in the report on specific points, particularly with regard to residual discrimination and the situation of minority groups. He hoped that such gaps would be filled in a future report.

11. He would have liked examples of associations that were reported to have been disbanded and of groups pursuing racist or discriminatory goals. With regard to paragraph 43 of the report, he inquired why the provisions providing for the punishment of racist acts had never been applied. Were citizens not sufficiently informed or was it because of obstacles in the way of access to justice or indifference or reluctance on the part of the judicial authorities? Given that Greece had replied to individual requests before the European Court and Commission of Human Rights and that no complaints of racial discrimination had been lodged with those bodies, he asked why Greece was not intending, in the near future, to make the declaration provided for in article 14 of the Convention.

12. Mr. van BOVEN emphasized the need, having regard to the diversity of national situations, for the reports of States parties to include as much information and clarification as possible and to be submitted within the prescribed time-limits. He was pleased to note that the procedure for the ratification by Greece of the International Covenant on Economic, Social and Cultural Rights was nearing completion and hoped that Greece would also ratify the two Additional Protocols.

13. With regard to Act 97/1979 promulgated pursuant to article 4 of the Convention, he wished that the Greek delegation would submit statistics or cite specific cases concerning its application. There were bound to be problems. He noted with satisfaction that the Act had been amended in 1984 so that it also covered discrimination on religious grounds.

14. Regarding the application of article 6 of the Convention, he wondered whether the remedies provided for under article 57 of the Greek Civil Code, which were intended essentially to protect the reputation of individuals, were not confined to too limited an area. Furthermore, he hoped that Greece was also actively planning to make the declaration provided for in article 14 of the Convention.

15. Having learned that persons had recently been tried and convicted for having published their opinions on Greek foreign policy and on the question of minorities which were not in accordance with those of the Government, he asked the Greek delegation whether that information was correct and whether it reflected the official position of its country.

16. Mr. GARVALOV said that it was known how much progress had been made by Greece on the road to democracy. With regard, however, to the incorporation of international instruments into domestic law, some ambiguity remained, as had already been observed by Mr. Wolfrum.

17. Referring to certain questions left unanswered by the report under consideration, he noted firstly that paragraph 15 dealt with the relationship between the State and religion and said that one might well wonder why. With regard to paragraph 16, he asked if there were political parties in Greece formed on an ethnic basis. Concerning paragraph 21, he pointed out that Thrace was also, in part, on Turkish and Bulgarian territory. In Greek western Thrace, the Pomakes referred to in the paragraph were, in fact, of Bulgarian origin but were Muslim and in that region there was a mixture of peoples living together. In Bulgaria, there were also citizens of Turkish origin, and they were represented in Parliament. With regard to the Gypsies, also mentioned in paragraph 21, some of them were Christians and others Muslims. He recalled in that connection that a treaty had been signed in 1925 between Bulgaria and Turkey defining the status of Muslims in Bulgaria and of Bulgarians in Turkey.

18. The problem of minorities in that part of the world should not be underestimated, and the situation in Yugoslavia should serve as a lesson in that respect. For many years the rights of minorities there had been proclaimed and the problem had been thought solved, but now a terrible civil war was raging there. Nor were other countries immune from such threats, and for that reason every effort had to be made to solve the problems by democratic means. It was known that Yugoslav Macedonia had opted for independence in

September 1991 and that the choice had been confirmed by referendum the following month. There was also a Macedonian community in Greece and the question was how its ethnic identity was to be recognized in the framework of the State.

19. Nevertheless, the Committee should refrain from asking Greece embarrassing questions not put to States that had not ratified the Convention. He assured the Greek delegation for his part that the Committee was motivated by a desire to see the Convention applied in all situations, including the new situations currently emerging in the world.

20. Mr. KRATEROS JOANNU (Greece), in reply to the questions raised by the members of the Committee, said that he had the impression that those questions concerned not only the Convention but the whole range of human rights. That was a source of gratification to him since he had himself been concerned with human rights in his country for a number of years. Some 60 questions had been asked which he could not answer one by one but would instead group them into categories. Questions that he could not answer immediately would be dealt with in the next report of Greece.

21. He first recalled that his country was a member of the European Community and that its foreign policy therefore fitted in with that of the Community. By way of example he referred to the decisions taken shortly before at the meeting in Lisbon.

22. With regard to the declaration provided for in article 14 of the Convention, he pointed out that Greece was currently planning to set up a department which would deal with all petitions submitted under international instruments.

23. Specific texts at the domestic level were necessary to allow Greek courts to apply the Convention directly. To that end, Act 97/1979 had been promulgated, and the Committee had already been informed about that law in previous reports submitted by Greece. So far, no sentences had been passed on the basis of that law, simply because, however, there had been no complaints, a situation to be explained by the fact that Greek society was without racist tendencies. Thus, racial discrimination did not exist with regard to housing. If a problem arose in that connection, the victim could appeal to the Attorney-General.

24. With regard to the question of minorities, he recalled that the treaty signed in Lausanne in 1923 (which bound not only Greece and Turkey but also major Powers like the United Kingdom and France) had provided that Muslims could remain in western Thrace, whilst persons of Greek origin could stay on Turkish territory.

25. There were currently, in that part of western Thrace situated on Greek territory, a Muslim minority which, as was noted in the report, was estimated to be composed of between 110,000 and 150,000 persons. Of those only a few dozen had lodged complaints. In fact, in Thrace, there were a small handful of agitators requesting annexation to another country; the rest of the community lived in peace. Western Thrace had long remained underdeveloped but major steps had been taken to help the Muslim minority, to the extent indeed of triggering resentment among the orthodox population. Development was ultimately the means to solve the problems of the region. Greece was, moreover, particularly sensitive to the problem of minorities in view of the fact that there were many Greek minorities outside the country. In particular, Greece was a co-sponsor of the draft world declaration on minorities.

26. Incidents had occurred in 1990 in Komotini, the central town of western Thrace which he knew well having studied at university there. The reported incidents had not in fact been racial in character and had involved opposing groups from the same community. In addition, no complaint had been made to the Attorney-General and there had been no reason to give effect to Act 927/1979. Moreover, the Muslim minority in Thrace did not generally ever appeal to the Greek courts. The expropriation measures that had been taken had affected both Christians and Muslims (82 per cent of property owners were Christians and 18 per cent Muslims), but no protest had been lodged with the courts.

27. With reference to parliamentary immunity, it needed to be made clear that legal action had been taken against Mr. Ahmed Sadiq when he was no longer a member of Parliament for having engaged in activities likely to harm relations between Greece and other States, and no country could allow one of its citizens to advocate the annexation of a part of the national territory to another country. Mr. Ahmed Sadiq had, however, only received a fine. Moreover, two Muslim members of Parliament were currently in office and even though they were fomenting hatred, no action was being taken against them.

28. Furthermore, the Greek electoral system provided for a threshold of 3 per cent of votes for parties to be represented in Parliament, which was less than in many other countries. In fact, Turkey, which complained that the 3 per cent threshold prevented Muslim representation, had itself set the threshold at 10 per cent.

29. With regard to the Muftis, he recalled that Greece had granted them legislative powers and that, as a result, they had to be nominated under a specific procedure: the Muslim community proposed three persons to the Greek authorities which appointed one of them.

30. With respect to the question of the Albanian minority, he wondered what exactly was meant by the term "minority". If no more than a few families scattered around the country could be so designated, then there was indeed an Albanian minority in Greece. However, it should be recalled that a large part of Albanian territory had been under Greek authority until the Second World War and it was more appropriate to speak of a Greek minority in Albania. Concerning the question of Macedonia, that was a region divided among Greece, Bulgaria and former Yugoslavia. The idea of a Macedonian ethnic group was not a sociological reality but had been invented by Marshal Tito with a view to creating a new State. There was then no Macedonian minority in Greece but merely citizens who spoke a language very similar to Bulgarian.

31. In reply to the question whether a racist association could be dissolved by a Greek court, he declared that he was not aware of any such case.

32. Finally, he requested members of the Committee to forgive him if he had not replied to all their questions. His country would provide full and detailed replies in its next report.

33. Mr. WOLFRUM, speaking as country rapporteur, thanked the Greek delegation for having tried to reply to the questions asked and for having made it possible to resume and expand the dialogue between the Greek Government and the Committee. Not all the questions had been addressed, however, and some replies were hardly convincing. He therefore looked forward with interest to the next report that was due to be submitted by Greece in two years' time.

34. Mr. ABOUL-NASR, returning to the problem of Macedonia, said that the inhabitants of the region did indeed constitute an ethnic group since they had their own language and wanted to live together.

35. Mr. FERRERO COSTA expressed surprise at certain statements made by the Greek delegation, in particular by the sweeping assertion that the fact that the courts had never had to deal with racial cases showed that there was no discrimination of that kind in Greece. He would welcome further information in the next report of Greece on measures taken by the Government to ensure the implementation of the provisions of article 5 of the Convention.

36. Mr. van BOVEN noted that the Greek delegation had not replied to all of the many questions asked. He hoped that the following report would contain answers to the outstanding questions and would be submitted within the time-limits.

37. The CHAIRMAN proposed that Mr. Wolfrum be allowed the time required to prepare his conclusions and thanked the Greek delegation for having presented its country's report and for having provided additional information.

38. The Greek delegation withdrew.

Tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8)

39. At the invitation of the Chairman, Mr. Rhenan Segura, Mr. Rodríguez Alpizar, Mr. Muñoz and Mr. Valerio (Costa Rica) took places at the Committee table.

40. Mr. RHENAN SEGURA (Costa Rica) began by recalling that Costa Rica had been the first country to ratify the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights, as well as one of the first countries to ratify the International Convention on the Elimination of All Forms of Racial Discrimination, on 4 January 1969, which showed its constant interest in human rights.

41. Costa Rican society had been formed in a quite distinctive way since, in contrast with other American countries, there had never been any slaves or large landowners in Costa Rica. The country had therefore been able to establish democratic institutions which it had developed throughout the colonial period and had consolidated until the present day. The country currently had a well-deserved international reputation in the area of promoting and protecting human rights.

42. Introducing the report of his country (CERD/C/197/Add.8), he recalled that it dated from the second half of 1991 and that some information needed to be updated. As a former member of the Committee, he also acknowledged that the document in question did not comply with the criteria laid down by the Committee. It contained no statistical data, was unclear in parts and gave a

great deal of information on certain historical or secondary facts while leaving out important points concerning discrimination. The fact was that Costa Rica was lacking in competent staff and had to discharge so many international obligations that the Ministry of Foreign Relations was overburdened with work. Costa Rica had ratified all existing international instruments, except the Convention Against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment, and that exception had been due to legislative problems which had not been able to be resolved.

43. The main gap in the report of Costa Rica was that it did not contain a chapter dealing with the black population of the country, which comprised 17,000 persons or 0.56 per cent of its total population. The black community lived mainly in the Limón region, and in the centre of the country, in particular in the capital, and was fully integrated into the economic and social life of the country. The Constitution, like other legislation such as the Prohibition of Discrimination in respect of Employment Act and the Health Act along with the Civil Code, the Criminal Code and the Labour Code, prohibited all form of discrimination based on race, colour, sex, political opinion, national or social origin, filiation or economic situation such as to limit equality of opportunity or treatment in respect of employment.

44. For that reason, Costa Rica had no statistics relating specifically to the black population since all racial distinctions were prohibited. Blacks had access, in the same way as whites, mixed race groups and the indigenous population, to all social services. Blacks were elected to Parliament and in 1986-1990 a black member of Parliament was Vice-President of the Congress. There were ambassadors and other diplomats, judges, senior officials at the University of Costa Rica and writers who were black. An important cultural movement was researching the origins of this Jamaican and West Indian component of Costa Rican society and, in the province of Limón, a museum of black civilization had been opened with the main aim of highlighting the economic and cultural contribution made by the black population in the country. Furthermore, through the initiative of several university professors, black literature had made great strides in recent years. Also, for about 30 years, despite the country's difficult economic situation, there had been three English-Spanish bilingual State schools in the province of Limón to prevent the black population from being cut off from its roots.

45. What was more, Costa Rica was sparing no efforts in the educational field and its literacy rate was one of the highest in the world, as evidenced by UNDP's Human Development Report 1991. Curricula were structured in such a way as to teach children from the earliest years to respect others and their differences. Children were taught the various cultural principles in order to combat the prejudices at the root of discrimination and were familiarized with the provisions of the main international human rights instruments.

46. It was noteworthy that, with a view to the regional conference preparatory to the World Conference on Human Rights, which would be held in Costa Rica in December, the Special Commission formed for that purpose had launched a human rights campaign, particularly with regard to the most vulnerable groups in society, namely women, the indigenous population, children, the elderly and refugees.

47. With regard to the situation of the indigenous population, he was anxious to furnish explanations concerning the allegations directed against the Government of Costa Rica by CODEHUCA (a non-governmental human rights organization) at the last session of the Commission on Human Rights to the effect that a group of indigenous persons living in the south west of the country had been abused and persecuted. The facts were that a patrol of 12 policemen had gone to the Talamanca region following complaints by several inhabitants that cannabis was being grown in the region. On 22 February, the patrol had clashed with presumed drug traffickers, including a number of indigenous persons, and two persons had been killed. The policemen had arrested several persons and were alleged to have exacted various payments from them. The Government had immediately requested the opening of a judicial inquiry. The 12 policemen had been suspended from their duties and held in detention. Three of them were still in prison. It would be for the courts to determine responsibilities and the punishment to be applied.

48. At the international level, the Government of Costa Rica had always condemned categorically the crime of apartheid and in 1986 had decided to break off diplomatic relations with the Republic of South Africa. Since 1967 all commercial relations with South Africa had been prohibited. Costa Rica had not recognized the Bantustans and had condemned the occupation of Namibia.

It had always voted for United Nations resolutions aimed at putting an end to apartheid once and for all and had been actively involved in the efforts to combat that scourge since it had served in turn as Chairman and Vice-Chairman of the Special Committee against Apartheid.

49. He recalled finally that Costa Rica had ratified ILO Conventions Nos. 169 concerning Indigenous and Tribal Peoples in Independent Countries, 111 concerning Discrimination in respect of Employment and Occupation and 100 concerning Equal Remuneration.

50. Mr. DE GOUTTES, country rapporteur for Costa Rica, welcomed Mr. Rhenan Segura as a former member of the Committee with whom dialogue promised to be very fruitful. He paid tribute to Costa Rica which, in a region of the world rife with conflicts, was a country devoted to peace and tolerance, attached to democratic institutions characterized by political pluralism and the possibility for power to change hands and one of the rare States in the world to have proclaimed the abolition of the army in its Constitution.

51. Moreover, Costa Rica although not economically powerful had an influential position at the international level. It had been behind the new impetus given to the regional peace process with the ARIAS plan adopted in August 1987. Several international organizations were operating on its territory and the country itself was represented in many international organizations. In addition, Costa Rica was one of the States to have acceded to a considerable number of international human rights instruments. It had ratified the International Convention on the Elimination of All Forms of Racial Discrimination as early as January 1967 and in January 1974 made the declaration provided for under paragraph 1 of article 14. Costa Rica had always been concerned to maintain dialogue with the Committee and to submit regularly its periodic reports on the application of the Convention.

52. Lastly, Costa Rica was a country of jurists, with a profound respect for the law, where institutions and provisions for the protection of human rights were strongly defended.

53. Clearly, then, Costa Rica was a country subject to the rule of law, but - precisely because it aspired to be a model of democracy in Central America - there were questions to be asked about a few points that remained unclear.

Thus, despite the homogeneity of the population and of society in Costa Rica, acute problems could still arise for persons belonging to minorities, notably indigenous populations, black populations and refugees. On that point, the report of Costa Rica under consideration (CERD/C/197/Add.8) revealed certain shortcomings, as the representative of that country had just admitted.

54. As far as the positive aspects of the report were concerned, and with reference to the questions that had been raised by members of the Committee in 1987, it could be stated that the Government of Costa Rica provided therein satisfactory information on four essential questions.

55. First, concerning the country's policy on apartheid, paragraphs 55 to 65 of the report gave a very comprehensive account of the measures taken in that regard.

56. Secondly, the report contained very interesting information on how international instruments took precedence over Costa Rican domestic law; paragraphs 88, 89 and 140 to 142 showed that under article 7 of the Costa Rican Constitution, international instruments approved by the Legislative Assembly took precedence over the laws of the country upon their promulgation. In addition, articles 10 and 48 of the Constitution gave the Constitutional Court jurisdiction in respect not only of actions of unconstitutionality but also of remedies of habeas corpus and amparo, including cases involving violations of the fundamental rights laid down in international instruments: thus, it was formally recognized not only that the provisions of international law were of a higher rank than domestic laws, but also that they were of equal rank with constitutional provisions.

57. Thirdly, the report under consideration laid particular emphasis on the unique institutional machinery existing in Costa Rica for the protection of human rights. Special mention should be made in that connection of the Constitutional Court division of the Supreme Court of Justice (with jurisdiction in respect of the remedies of habeas corpus and amparo), the National Indigenous Affairs Commission, the Office of the Ombudsman for Human Rights, an office attached to the Ministry of Justice and set up in 1990 which appeared to have very wide-ranging powers, the National Refugee Commission, and lastly the Offices of the Ombudsman for Women and the Ombudsman for Children, which were described at length in the report.

58. Costa Rica had endeavoured in the report under consideration to respond to the requests made earlier by the Committee for information on the demographic and ethnic composition of the population. However, although there was a great deal of information about the population in general, there was all too little about the ethnic and indigenous groups, which were of most interest to the Committee. It was true that the geographical distribution of the seven indigenous groups in the country was given in paragraph 65, but that was not enough. It was somewhat surprising, for example, that paragraph 64 should state that there was no reliable estimate of the number of indigenous people; the figure of 19,050 persons living on reservations, accounting for 1 per cent of the country's total population, was advanced, whereas the proportion of 0.5 per cent had been quoted in Costa Rica's previous report. It would be helpful if in future the Government could provide more detailed demographic data on minorities, as indeed the representative of Costa Rica had just undertaken to do.

59. The report had a number of weaknesses. According to the Committee's guidelines, periodic reports should consist of two parts - first, a general part describing the situation in the country, and secondly, an analytical part, describing how each article of the Convention was implemented in practice; the document now before the Committee did not exactly comply with those requirements.

60. The report's first weakness concerned its general part, which contained too much data of no direct interest to the Committee, such as for example the long descriptions of the country's geography, its constitutional development and its administrative structure. Similarly, the information given in paragraphs 119 to 121 on the protection of women and children came more within the terms of reference of other bodies. On the other hand, the general part did not provide data that would have been useful on social, economic, political or other indicators with a direct bearing on problems of discrimination. For instance, regarding developments in the country's economic situation, the report offered no up-to-date figures on the rate of inflation, the foreign debt burden, trends in per capita GNP and GDP, the unemployment rate, the social cost of the reforms demanded by the IMF, etc. Where the social situation was concerned, information on possible social conflicts, on any tensions that might exist in the most disadvantaged parts of large towns, and on measures taken in shanty-town areas, would also have been useful.

Lastly, the Committee would have liked to know more about recent political developments, notably about reforms introduced since the election of the new President of the Republic.

61. The second weakness of the report was the incompleteness of its second part, which should have consisted of an article-by-article analysis of how the Convention was being implemented. It was true that there was some information on the matter dotted around in chapters III, IV and V, but it was set out piecemeal and not in accordance with the systematic method recommended by the Committee. For that reason, he would be led to raise a number of questions, following the order of the provisions of the Convention.

62. First, concerning article 2 of the Convention, some explanations were given regarding the measures taken on behalf of two minority ethnic groups, namely Indians and refugees, but the black population was not mentioned in the written report, although in his oral introduction the representative of Costa Rica had provided useful details in that connection. Paragraphs 67 and 103 to 111 contained comprehensive and useful information on laws and decrees enacted to protect the indigenous population. However, the report was not sufficiently explicit on the practical difficulties still encountered by Indians on a daily basis. Those difficulties had been described, in particular, by the Commission for the Defence of Human Rights in Central America (CODEHUCA) at the forty-eighth session of the Commission on Human Rights; they had concerned health, education, land ownership and freedom of movement, and further explanations on those points would be necessary. In addition, a number of questions were prompted by the parts of the report relating to indigenous groups, regarding for example the practical means of action available to the National Indigenous Affairs Commission. Since the 1977 Act which had granted 140,000 hectares of land to the indigenous people, had any measures been taken to continue to distribute land, regulate land use more strictly and, most importantly, prevent unlawful evictions? According to some sources, notably CODEHUCA, there had recently been several cases of the land rights of indigenous people being violated on the occasion of mineral prospecting operations. Lastly, an Indigenous Identification Act had recently been adopted in order to issue identity cards to the indigenous population: was it to be concluded that the identity of the indigenous people had not previously been recognized?

63. With regard to the refugees who had entered Costa Rica in large numbers fleeing conflicts in the region, it could be considered that paragraph 114 of the report gave satisfactory replies to the questions raised by the Committee in 1987 (on the one hand, reception arrangements, and on the other, setting up of the National Refugee Commission). However, where the black population was concerned, the information given was very inadequate. Thus, paragraph 111 noted merely that the black population was "fully integrated in the nation's political and economic development", but the Committee would certainly not be satisfied with such a categorical and optimistic statement. In fact, according to other sources of information, Blacks in the province of Limón had enjoyed right of access to the central valley for only some 40 years, and according to some reports, even now they were almost never seen there except on festival days. The Costa Rican Government should therefore provide more detailed information on the actual situation of Blacks in the country. More generally, if the actual situation of all minority ethnic groups was to be properly assessed, information would need to be provided on the usual social indicators of non-integration: rates of unemployment, delinquency, alcoholism, prostitution, illiteracy, suicide, etc., which were very reliable criteria for judging lack of adaptation to the rest of society.

64. The explanations given in the report on implementation of article 3 of the Convention were satisfactory. Concerning implementation of article 4 of the Convention, in addition to the principle that all discrimination was prohibited, a principle enshrined in article 33 of the Constitution of Costa Rica, the report listed a number of legislative enactments prohibiting racial discrimination, but the list appeared to be incomplete where the requirements of article 4 were concerned. No information was provided as to whether there was any legislation declaring propaganda or the dissemination of ideas based on racial superiority or hatred, as well as acts of violence, or incitement to such acts against any race or group of persons on the grounds of their colour or ethnic origin, to be offences punishable by law. Nor did the report indicate whether there was any legislation prohibiting racist organizations and racist propaganda activities, and declaring participation in such organizations or activities an offence punishable by law. It should also be noted that the penalties provided for under article 385 of the Criminal

Code for incitement to hatred were relatively mild: it would be interesting to know what degree of seriousness was attributed to that offence in the scale of penalties in force in Costa Rica.

65. Although the principle of equality of all persons before the law enshrined in article 5 of the Convention was proclaimed in article 33 of the Constitution, and despite the various decisions of the Supreme Court cited in paragraph 150 of the report, information obtained on the situation of ethnic minorities in Costa Rica suggested that those groups did not in fact enjoy all the rights provided for under the Convention. For example, the right to equal treatment before the courts could only be verified if the Committee knew the actual number of complaints lodged by Indians and Blacks on which a decision had been handed down; similarly, the right to security of person, and to protection against violence or bodily harm inflicted by government officials or by other persons, was no doubt safeguarded in law by the existence of the remedies of habeas corpus and amparo; but when Indians were victims, for instance, of evictions, acts of bodily harm or violence, were they in a position to avail themselves of those remedies? Were they informed of their rights, and did they have the necessary means to enforce them? With regard to political rights, what was the percentage of Indians and Blacks who took part in elections, and what percentage were employed in the public service at all levels? Was the right to freedom of movement and residence fully guaranteed in the case of the Indians, in view of the fact that they had been settled in reservations, and that, according to CODEHUCA, they required a permit from the National Indigenous Affairs Commission to change reservations? Was not the right to property limited in the case of Indians confined to such reservations? Did the Indian populations fully enjoy, on an equal footing with other citizens, the other freedoms enumerated in article 5 of the Convention: right to nationality, right to choice of spouse, right to freedom of religion and opinion, right of access to public places, etc?

66. Lastly, despite the measures for the protection of human rights cited in paragraphs 92-110 of the report, the living conditions of the Indians, which appeared to be extremely precarious, were bound to make it very difficult for them to enjoy their economic, social and cultural rights (right to health, to medical care, access to social services, right to work, to housing, to education and vocational training, etc.). CODEHUCA had referred in particular in that connection to prostitution among young indigenous people, persistent

illiteracy, epidemics, and high infant mortality. The Committee would undoubtedly wish the Costa Rican Government to provide it with a more realistic picture of the actual situation of the Indian populations in subsequent reports.

67. Concerning article 6 of the Convention, he noted that the report contained interesting explanations of the remedies of habeas corpus and amparo and cited a number of provisions prohibiting and penalizing discriminatory measures. However, no statistics were provided on the number of complaints lodged and sentences handed down, and no example was given of any case of racism which had led to a conviction: that was a very unfortunate omission, since it meant that the Committee was thus deprived of one of the means of ascertaining whether the Convention was really being implemented. The Costa Rican Government should therefore provide detailed information in its next report on complaints and convictions in regard to racism, with all the relevant statistics available, including if possible the percentage of complaints and convictions for offences against Indians, Blacks and refugees.

68. Concerning implementation of article 7 of the Convention, the report provided interesting information on the cultural role of the National Indigenous Affairs Commission, on the bilingual policy pursued in areas where indigenous peoples lived, on the existence of schools for indigenous groups, and on civic education courses. Other members would no doubt have questions to raise on those matters, and he would confine himself to asking how many schools the indigenous peoples had, what proportion of them attended such schools, how many Indians went on to higher education, how many indigenous persons occupied responsible positions both in the public sector and in the private sector, and what cultural activities for indigenous populations were offered - for instance, radio or television programmes, or videos in the appropriate languages. Lastly, did the Costa Rican Government protect and encourage expressions of the Indians' own distinctive culture, such as art and music?

69. Mrs. SADIO ALI found the report (CERD/C/197/Add.8) difficult to assess, in that it was not drafted in accordance with the Committee's guidelines and did not reply to questions raised at the time of consideration of Costa Rica's previous report.

70. She would confine herself to the question of indigenous populations, since the report contained a number of contradictory statements in that regard. Thus, the Government claimed that there was no Indian problem, while at the same time admitting, in paragraphs 64, 106 and 107, that those populations, in addition to being geographically and socially marginalized, remained "deliberately and tenaciously isolated". In paragraph 67 of the report reference was made to "the abuses suffered by the native population" and to the legislation granting them 140,000 hectares of land. Since the reservations were inhabited by 25,108 individuals, only 19,050 of whom were indigenous, it was to be concluded that the latter were far from living in total isolation. What was the economic, social and cultural status of the two population groups living in the reservations, and how were their respective situations to be compared? How had the 140,000 hectares of land been allocated, and in what way had the land so granted improved the lot of the persons concerned? Statistics would be useful in that connection.

71. The 5,000 Guaymis, who were thought to be descendants of the original inhabitants of Costa Rica and who had been listed in a separate category, had organized a protest demonstration in the capital in July 1990, demanding to be recognized as citizens of the country - a demand which had now been granted; previously, they had possessed only temporary residence permits, which cost \$43 to renew - an exorbitant sum for most of them. How had the authorities gone about issuing them with identity cards, in view of the fact that some Guaymis spoke no Spanish and did not know their date of birth? Was that population group now covered by the Costa Rican social security and health insurance system? In addition, it would be interesting to know to what extent population groups of non-European origin had access to the system of secondary education set up in 1949, and to what extent they were able to buy land, take out bank loans, and hold office at local government level, as well as take part in the planning and execution of projects that concerned them.

72. In paragraph 106 of the report, mention was made of indigenous populations who had migrated to Costa Rica more than 30 years ago: were they included among the 19,050 persons referred to in paragraph 64, and what was their social, economic and cultural situation?

73. Generally speaking, the picture of the indigenous populations given in the report was somewhat confused, and the Committee would need to be provided with more structured data. It would also need to know how the Government was

tackling the task of establishing infrastructures in reservations which, because they were so far away, had too few schools and inadequate medical services and power and drinking water supplies.

74. Mention was made in paragraph 62 of the high degree of mixing between population groups in Costa Rica. Specific demographic data concerning the mixed race groups would be useful, as well as details about their current position in the social hierarchy - level of education, types of employment, housing, etc.

75. Paragraph 114 of the report mentioned the 350,000 Central Americans who had sought asylum in Costa Rica. Since Mr. de Gouttes had already referred to the problem of refugees, she would not return to it. It was, however, stated in the aforementioned paragraph that most of the persons concerned had "a low cultural level", a somewhat condescending expression which smacked of racial discrimination. It was stated in paragraph 89 that racial discrimination did not constitute a problem in Costa Rica, because there was no restriction or inequality of opportunity on the grounds of racial or ethnic origin: that was perhaps true in the legal sense, but the attitude of the white population towards indigenous people, Blacks or refugees did not really seem to have changed. In that context, it would be interesting to have access to reports issued by non-governmental bodies concerned with human rights in Costa Rica. In his statement, Mr. de Gouttes had himself relied to a large extent on the very illuminating report produced by one of those bodies. In her view, any human rights violation brought to the attention of such bodies should be reported to the Committee. It would also be useful for it to have details on the activities of the Ombudsman, and to know whether poorer citizens were eligible for legal aid.

76. In regard to labour legislation, workers' representatives claimed that the Labour Code of 1943 was out of date, particularly in respect to grounds for dismissal. Did the Government of Costa Rica have any plans for amending that code?

77. Mr. BANTON endorsed the comments made by the preceding speakers, with the exception of the request for what he considered to be exaggeratedly detailed demographic statistics.

78. He would appreciate clarification on the following questions concerning the indigenous populations: what action had been taken following the criticisms levelled at the National Commission for Indigenous Affairs? Were

deforestation activities, which were harmful to the natural environment of the indigenous population, continuing in the Boruca region? Had the deficiencies in health services noted in the region of Cabagra been remedied, and what procedures for consultation on such matters existed? Were the procedures for the issuing of identity cards to the indigenous population in conformity with the provisions of the Convention? Concerning the drilling operations in an indigenous "region" mentioned in paragraph 66 of the report, did the term "region" imply the traditional lands of indigenous groups, or lands which they were occupying without title? The question of land rights should be covered in more detail in the next report. What were the abuses referred to in paragraph 67 of the report? Did police training take into account the provisions of the United Nations Code of Conduct for Law Enforcement Officials? Lastly, the Costa Rican Commission on Human Rights (CODEHU) had expressed its concern about the partiality of reports on human rights, arising from the fact that non-governmental organizations working in the field of human rights were not consulted by the authorities responsible for preparing reports. Did Costa Rica plan to consult such organizations for that purpose in the future?

The meeting rose at 6.10 p.m.

PROVISIONAL
For participants only

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COMMITTEE ON THE ELIMINATION OF RACIAL DISCRIMINATION

Forty-first session

PROVISIONAL SUMMARY RECORD OF THE 942nd MEETING

Held at the Palais des Nations, Geneva
on Wednesday 5 August, 1992, at 10 a.m.

Chairman: Mr. VALENCIA RODRIGUEZ

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States parties under article 9 of the Convention (continued)

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The meeting was called to order at 10.10 a.m.

CONSIDERATION OF REPORTS, COMMENTS AND INFORMATION SUBMITTED BY STATES PARTIES
UNDER ARTICLE 9 OF THE CONVENTION (agenda item 7) (continued)

Tenth and eleventh periodic reports of Costa Rica (CERD/C/197/Add.8)
(continued)

At the invitation of the Chairman, Mr. Rhenan Segura and Mr. Vernor Muñoz
(Costa Rica) took places at the Committee table.

Mr. AHMADU said the report of Costa Rica was to be applauded, particularly the sections devoted to the Constitution and to minorities. He believed, however, that the situation in Costa Rica was far from perfect, especially where its sociological aspects were concerned. His main preoccupation was the degree to which the black population, in particular, had been integrated and could become involved in decision-making and the extent to which it had access to occupations such as the Civil Guard. He would also like to know whether Roman Catholicism was the only religion tolerated in the country. If so, he feared that discrimination might be felt by persons of other faiths.

Mr. WOLFRUM said that the human rights situation in Costa Rica was, in general, to be commended, especially since the introduction of constitutional reform. However, he feared that the human rights situation was less satisfactory with regard to the indigenous population.

The report stated that there were 19,050 indigenous persons in Costa Rica but he believed the figure was nearer 30,000, although, in the absence of a census, a realistic estimate was difficult. He was concerned that, until 1991, members of the Indian population had been unable to obtain identity cards, which in turn denied them the possibility of obtaining passports and, without passports, they could not own or purchase land. The situation had changed following legislative measures taken in 1991 but he would like to know whether the entire indigenous population had now been registered for identity cards, and why the process had taken so long. Although the legal situation had improved, land acquisition remained a major problem. He was aware that the Government had provided for reservations, but information was needed on their status. He was not sure that the Government's measures fully met the requirements of the indigenous population. For example, the National Indigenous Affairs Commission had proved unacceptable to the indigenous

population, being viewed as an adversary. In conclusion, while the legal, economic and social situation of Costa Ricans in general was satisfactory, that of the indigenous population needed to be improved.

Mr. van BOVEN said Costa Rica was to be congratulated on accepting its political responsibilities in the region and welcoming a large number of refugees who had fled violence in neighbouring countries. It had continued its peace efforts in the region, had a good human rights record and had been an early signatory to the International Convention on the Elimination of All Forms of Racial Discrimination. It had submitted regular reports but he regretted that they had mainly contained static facts rather than information on trends and developments. Furthermore, the position of indigenous peoples was not adequately covered in the latest report. Whilst details were given of civil and political rights, economic, social and cultural rights were hardly mentioned. With reference to paragraph 110 of the report, it was not clear which of the ILO Conventions had been ratified by Costa Rica, since the Indigenous and Tribal Populations Convention, 1957 (No. 107) had subsequently been revised in 1989. According to paragraph 111 of the report, the black population was "fully integrated in the nation's political and economic development", but he would like to know whether the black population played a significant role in positions of authority in the country and how the term "fully integrated" was to be interpreted. Although Costa Rica had made a declaration under article 14 of the Convention, he was not sure how far the population, indigenous and otherwise, was aware of the opportunities offered under the article, and indeed, how far the Convention itself was known.

Mr. ABOUL-NASR inquired what the status of reservations was, who owned such areas and whether the indigenous populations were forced to live there. He also wished to know whether the indigenous population had been consulted before the Costa Rican Petroleum Refining Company (RECOPE) had entered its region and drilled for two years.

Mr. DIACONU thought that there was great potential for discrimination in Costa Rica due to the presence in its territory of both immigrants and an indigenous population. He would like further information on the access of indigenous persons to national institutions. The illiteracy rate in Costa Rica, which, according to the report, was 3 per cent, was a considerable achievement, but he believed the rate among indigenous persons was nearer 75-80 per cent. He would like to know why such a discrepancy existed and what measures had been taken to remedy the situation.

Mr. RHENAN SEGURA (Costa Rica), referring to the large number of requests for statistics, said he recognized that statistics were useful but thought that they did not always give a complete picture of a situation. The figure of 25,108 given in paragraph 67 for the indigenous population inhabiting reservations could be explained by the fact that reservations were also inhabited by persons who were not, or not fully, Indian, due to mixed marriages, for example. The main problem facing Indians on reservations was health. Whilst 96 per cent of the population in general had access to health services, problems arose on the reservations because of their remote location, difficulties of access and the conflict between the indigenous population's traditional medicine and acceptance of other methods and treatment. However, Costa Rica had established nutritional programmes, was encouraging preventive medicine and concentrating on combating cholera epidemics.

He recognized that the indigenous population also had problems with regard to education. The reservations lacked teachers, teaching materials and, in particular, parallel texts. There was also conflict with regard to the very principle of teaching Spanish because of fears that the indigenous population might lose its cultural identity. The Government was trying to ensure that education was provided in both Spanish and local languages.

Before replying to the questions raised concerning land ownership and mining activities, he would like to clarify the meaning of the term "reservation", a term which he personally disliked, but used for want of a better alternative. Some 40 years earlier, the population of Costa Rica had been concentrated in the central area and around the capital, but gradually agricultural colonization had spread outwards into areas inhabited by indigenous groups. That process had been facilitated by the absence of legal entitlements to the land concerned, as well as by internal differences between the indigenous communities, which made them powerless to resist the invasion. In such circumstances, there was clearly a need to set up reservations, which would make possible a communal system of land ownership on a permanent basis. The first attempt to establish a system of reservations had been in 1945: although well-intentioned, it had not been supported by legislation, and suffered from many deficiencies. Eventually laws had been passed to ensure that the system operated on a sound basis.

To some, the term "reservation" might suggest a kind of concentration camp, or an open-air museum where tourists could come to view protected species. That was far from being the case. In Costa Rica, reservations were areas of land that had been handed over, inalienably, to the indigenous community; the areas concerned appeared on maps, and were entered in public land ownership records. On the reservation, each family had its own holding, and could only sell that holding to other Indians; that requirement was in order to avoid loss of commonly-owned property through land speculation. The system had been successful in putting an end to the constant encroachment on the indigenous territories and to the inevitable retreat of their populations. It ensured that the Indians enjoyed the same rights to land and property as all other citizens of the country.

On the question of mining activities, the Legislative Assembly was responsible for granting mining concessions in the reservations: as was pointed out in the report, all indigenous population groups were represented in the Assembly. Concerning oil prospecting, it had once been thought that oil was to be found in one reservation, and concessions had been granted to a national oil company: unfortunately, after exploration, which had caused serious environmental damage, none had been found. He stressed that the problem concerned only one of the many reservations in the country. Finally, two experimental projects had recently been launched by the Electricity Institute of Costa Rica to bring electricity to indigenous populations in the reservations through the use of solar power.

On the question of freedom of movement, indigenous peoples were free to travel wherever they wished. They were legally required to give notice of their departure from a reservation, not in order to restrict their freedom of movement, but simply in order to protect the system of collectively-owned property.

Mrs. Sadiq Ali had raised the question of identity documents in connection with the Guaymis. The Guaymis were not in fact the oldest inhabitants of the country: they were a nomadic tribe living on the frontier between Panama and Costa Rica, an area which until 1942 had been completely wild. The Guaymis were traders, and moved from one country to the other according to which seemed to offer the best prospects for trade. Legislation had been drafted with a view to providing the tribe with identity documents: it should be realized that other indigenous groups already possessed identity

documents, and in addition were free to apply for passports should they so wish. The Guaymis had simply been asked to decide whether they preferred to settle in Costa Rica or in Panama, and the statement that they had had to pay \$43, or any other sum, to obtain a residence permanent was quite untrue. Bilateral agreements had been concluded between Panama and Costa Rica regulating the question of the Guaymi people.

Neither prostitution nor alcoholism were problems specific to the indigenous populations of Costa Rica, except to the extent that they were part of the more general social problem of the manipulation and abuses inevitably suffered by disadvantaged sectors of the population, whether indigenous, black, mixed race or white. Nor was there any serious drug problem among such groups. He could not for the present provide any statistics of suicide or delinquency rates among indigenous peoples, and no figures were available regarding the percentage of black, indigenous or mixed race groups among the prison population.

Indigenous peoples enjoyed the same constitutional freedoms and guarantees as other citizens. As in most developing countries, the social hierarchy was based on economic rather than on racial criteria.

In reply to the question on infrastructure, it was true that in the reservations such facilities as roads, schools and hospitals, not to mention supermarkets, were noticeably lacking. Although an infrastructure was gradually being created, it was still in no way comparable to that existing in more developed parts of the country.

Mr. de Gouttes had raised the question of the mobility of the black population. It was true that before 1948 black persons had not been allowed into the central part of the country, but after the revolutionary government had come to power those restrictions had been abolished. Today, the black population enjoyed unrestricted freedom of movement throughout the country.

Attention had been drawn to the contradiction between the statement in paragraph 111 of the report that the black population was fully integrated in the nation's political and economic development and the statement that that population was concentrated on the Atlantic side of the country. He stressed that the Atlantic region was an important area, with a well developed infrastructure; it contained the country's main port, and was also an important-banana producing region.

On the problem of refugees, the report he had submitted a year ago to the Committee on Economic, Social and Cultural Rights had given extensive information about the country's refugee population, and he would refer members of the Committee to that report.

Mr. Ahmadu had raised the question of freedom of religion. It was true that article 75 of the Costa Rican Constitution stated that the Roman Catholic religion was the State religion; that article had given rise to lengthy debate on the occasion of his report to the Human Rights Committee. Unfortunately, it was unlikely that the article, which he agreed was discriminatory, would be amended in the near future, but he stressed that, despite its provisions, there was complete freedom in Costa Rica to practise other religions, provided that they were not prejudicial to good order or contrary to the Constitution. In answer to a question on the administration of reservations, he said that reservations were in fact run by associations of indigenous groups.

He agreed with Mr. van Boven that the report had serious shortcomings: it should have contained more statistics, and more information on the black population. He himself was not the author of the report: it had been drafted by the Ministry concerned. All that could be done was to refer it back to the Ministry with the request that it should be redrafted according to the Committee's guidelines. It was all the more difficult for him, as a former member of the Committee, to defend a report which suffered from such deficiencies.

In reply to a further question from Mr. van Boven, he said that Costa Rica had ratified ILO Convention No. 69, and had recently submitted its first report to the ILO providing the information requested under that Convention.

In reply to the question whether steps were being taken to make the Convention more widely known, in particular among the legal profession, he said that, due to Costa Rica's high literacy rate, there was already extensive awareness of all human rights instruments, not only in the legal profession but also at secondary school level. Following the recent regional conference held in preparation for the World Conference on Human Rights, an active information campaign had been launched to increase public awareness of human rights. In Costa Rica, the Inter-American Institute of Human Rights organized conferences and training courses on the subject, some of which he himself had addressed.

Mr. VERNOR MUÑOZ (Costa Rica), in reply to a question from Mrs. Sadiq Ali, said that the Office of the Ombudsman for Human Rights had been set up in March 1990 as a subsidiary organ of the Legal Department of the Ministry of Justice. Its task was to protect the human rights of all persons on the territory of the Republic, not only Costa Rican nationals but also aliens. Its mandate covered certain specific areas, namely the rights of women, children, prisoners, indigenous peoples, senior citizens, and the handicapped, and included not only those human rights enshrined in the Constitution but also those defined in conventions and international instruments ratified by Costa Rica.

The five most important ways in which the Office would intervene were by interceding in respect of threats, obstruction or violations of human rights; by taking preventive measures and making recommendations to the competent authorities; by recommending mandatory sanctions against any officials who violated citizens' rights; by advocating legal reform to strengthen citizens' rights; and finally, by disseminating information on human rights as widely as possible. Where the rights of the child were concerned, the Office had set up a helpline, which was open day and night, to receive complaints from children.

Complaints could be submitted to the Office in writing, verbally or by telephone: there was no formal requirement, as long as the facts were clearly stated. It did not accept complaints submitted anonymously, or in obvious bad faith. The process was simple, and entirely free of charge. Where the complaint involved a public official and was supported by proof, it would be passed on to the official concerned, who would be given a few days to prepare a defence. After an investigation, the Office would hand down its decision. It also provided legal aid for those who could not afford lawyer's fees. Since 1990, the Office had received some 6,000 complaints, denunciations and requests for help: over a two-year period, it had held as many as 50 seminars, designed to increase awareness of human rights issues among police, the teaching profession and the indigenous population.

Mr. RHENAN SEGURA (Costa Rica) informed the Committee, that the inflation rate in Costa Rica was 18 per cent, the gross domestic product (GDP) US\$ 4,413 per capita, the unemployment rate 6.2 per cent and the external debt US\$ 3,600 million. As elsewhere in Latin America, Costa Rica had severe economic problems and was having to contend with the consequences of structural adjustment programmes. The new President, who had taken office in

1990, was pursuing broadly the same social policies as his predecessor and, despite the economic difficulties, the Government was doing its best to ensure that programmes designed to protect the most disadvantaged groups, i.e. blacks, indigenous peoples, women and children, were continued. The smooth transition from one government to another in Costa Rica was conducive to continuity. Moreover, the fact that Costa Rica did not maintain an army liberated otherwise wasted resources for social programmes.

In conclusion, he assured the Committee that he would convey its comments to his authorities and hoped that the shortcomings observed would be made good in the following report.

Mr. ABOUL-NASR requested some further information on the issue of indigenous populations and their property rights, which seemed to fall short of the provisions of the Convention. In the first instance, the representative of Costa Rica had said that the indigenous populations were "given" the land, which suggested that it might be taken back, whereas the land belonged to them. He had also understood the representative to say that a system of collective ownership was applied to the indigenous populations. If that was correct, the provision was discriminatory, since they were denied the right to own property individually. Moreover, the argument put forward to justify the requirement that Indians must register with the police on leaving a reservation, namely, that it was to protect their property, was not valid in the context of collective ownership. That also raised the question of whether other sectors of the population were required to register when they moved from one place to another.

Did the Ombudsman have the authority to question or challenge discriminatory laws, such as the property laws, with a view to their being amended so as to ensure that all people were treated equally?

Mr. BANTON wished to know whether anything had been done to make good the environmental damage caused by oil exploitation, referred to by the representative of Costa Rica. He also wished to know whether indigenous groups had the same access to compensation as other citizens when they were victims of environmental damage.

Mr. WOLFRUM, referring to Mr. Rhenan Segura's statement that the return of land to the indigenous population did not include mining rights, the explanation given being that that was the system operating in Latin America,

asked whether the exclusion of mining rights applied to all property rights, for instance, in the case of an estate owned by a white person. What exactly was the relationship between the owner of mining rights and the holder of an estate or property?

He would like to know if there was provision for any form of self-government for the Indian people, of the kind operating in Argentina, for example. Of the two organizations for the indigenous peoples, the national commission and the Indian cultural association, only the latter seemed to be fully accepted by the Indian population, and he asked when the Government expected to confer full powers on it so as to meet the wishes of the Indian population.

Mr. SHAHI, referring to the statement in paragraph 67 of the report that the 11 reservations were inhabited by 25,108 individuals, 19,050 of whom were indigenous, wished to know who the 6,000 non-indigenous persons were and whether they had a share in the communal land, the point being that, as he understood it, communal ownership was confined to indigenous inhabitants.

Mrs. SADIQ ALI asked for further information about the role of the Ombudsman. She wished to know whether a government official convicted of a human rights violation was penalized, and what reparations the victim received.

Mr. de GOUTTES, speaking as country rapporteur for Costa Rica, said that it was because the Committee had expected so much of Costa Rica that it had been particularly demanding and had noted so many shortcomings in the report. He thanked the representatives of Costa Rica for acknowledging those weaknesses and for the additional information they had provided. He hoped that the Committee's comments and questions would be taken into account in the following report which, in particular, should be drafted in accordance with the guidelines and should be more narrowly focused on issues of specific interest to the Committee, such as the real situation of ethnic minorities, particularly the Indian and black populations.

Another point of principle, raised by Mr. Aboul-Nasr, concerned the status of the reservations, which was somewhat ambiguous. A reservation could be a place of protection but at the same time one of non-integration and exclusion. It could be a rampart against property seizure but at the same time a focus of underdevelopment. The question of the Indians' participation

in decision-making on the reservations also needed clarifying. The issue of reservations for the indigenous population was a matter frequently addressed by the Committee and called for further discussion.

Mr. RHENAN SEGURA (Costa Rica), replying to further questions raised by Committee members, said that the status of mineral deposits in indigenous areas was covered by article 121 of the Constitution, which provided that they could not be dissociated from the control of the State. In reply to Mr. Shahi's question about the discrepancy in the figures given in paragraph 67 of the report, he said that the persons concerned were only half-Indian as a result of intermarriage.

Mr. VERNOR MUÑOZ (Costa Rica) said in reply to Mr. Aboul-Nasr's comments about apparently discriminatory property laws that the concept of individual property did not exist in Indian society, but was a European concept. From ancient times, the Indians had held property in common. Land was of fundamental importance in their lives. The intention was not to deprive the indigenous populations of their individual property rights, but to give legal force to their own concept of property rights. The State had not given the land to the Indians but had legitimized a de facto situation and found a place in national legislation for Indian ownership of land that belonged to them.

On the question of the Ombudsman's role vis-à-vis the law, he said that the Ombudsman's functions were to consider not laws but human rights enshrined in the Constitution and covenants, treaties and conventions ratified by Costa Rica. In any case, the Constitution took precedence over domestic legislation and any conflict was settled by the competent constitutional courts.

In reply to Mrs. Sadiq Ali's question about reparations, he said that the Ombudsman's activities were administrative only. When it was found that a civil servant had violated a right, he or she would be punished in accordance with the law. In the event of a criminal violation or offence, the offender would be prosecuted and brought to trial, and compensation for the victim would be sought. In such a case, the Office of the Ombudsman monitored any legal proceedings against a civil servant.

Finally, it should be made clear that any indigenous person living in Costa Rica had access to any place in the country. The fact that there was a decree regulating indigenous property did not mean that indigenous persons

could not acquire property elsewhere. The requirements concerning entry to and exit from reservations had been adopted for historical reasons and not to restrict freedom of movement.

Mr. ABOUL-NASE pointed out that the right of individual property ownership was not a strictly European phenomenon. Such a right had been recognized for centuries in many civilizations and could not be taken away.

The CHAIRMAN thanked the representatives of Costa Rica for their constructive dialogue with the Committee.

Mr. Rhenan Segura and Mr. Vernor Muñoz (Costa Rica) withdrew.

Fifth and sixth periodic reports of Bangladesh (CERD/C/192/Add.3)

At the invitation of the Chairman, Mr. Karim (Bangladesh) took a place at the Committee table.

Mr. KARIM (Bangladesh) said that, racially and culturally, Bangladesh had been a melting-pot for thousands of years, and today had a completely homogeneous population. There was no racial discrimination in Bangladesh, since there was but one mixed race and there were no traces of separate racial identity and prejudices.

All the domestic and external policies and actions of Bangladesh were non-racial. In international relations, Bangladesh had always stood against all forms of racial discrimination. It condemned the racist minority Government of South Africa and maintained no diplomatic, political, economic or cultural links with it.

Issues of private preferences and problems of an essentially integrative nature did not come within the definition of racial discrimination under the Convention. In Bangladesh, there were some residual problems of socio-political integration, as in most nation States. Some details had been given in the report about the integrative process in Bangladesh, simply to emphasize the country's success in dealing with the problems of a "post-racial" society. Those facts were necessary to understand the socio-political dynamics of Bangladesh in regard to the marginal problems of national integration and consolidation. The issues of tribal integration and religious tolerance came within the competence of the Commission on Human Rights. Sociologically, there was a distinction between tribe and race. The one, mixed race of Bangladesh comprised many tribes. There was a tribal population of 0.5 per cent, divided into as many as 36 tribes distributed all over the country. Some tiny tribal groups had difficulties, at the

instigation of their foreign mentors, in identifying themselves with the polity of Bangladesh. That was a problem of national integration and nothing else. Marginal problems of tribal terrorism had complicated and hindered democratic dialogue with a view to a political solution.

Religious discrimination was neither permitted nor tolerated in public life in Bangladesh. Issues of religious integration, which did not fall strictly within the Committee's mandate, had been included in the report to demonstrate the Government's awareness of such problems. Bangladesh was in fact far ahead of the basic requirements of the Convention.

Bangladesh had a sincere political will to fulfil its obligations under the Convention. It was fully committed to condemning and opposing racism and racial discrimination. Despite serious resource and other constraints, it remained committed to the reporting system. Its policy was to support and encourage the Committee in the proper discharge of its duties, and it would extend all due cooperation to the Committee.

Mr. YUTZIS, speaking as country rapporteur for Bangladesh, thanked the Government of Bangladesh for its fifth and sixth periodic reports, which largely complied with the formal guidelines for reporting. However, he took issue with the Bangladeshi representative's contention that there was no racial discrimination in his country, if such discrimination was to be understood within the parameters of article 1 of the Convention.

At the same time, it was to be welcomed that, following the departure of an authoritarian Government, democracy had been restored in Bangladesh, despite the continuance of problems to which "poor democracies" were particularly liable, including a high population density, natural disasters, and difficult economic circumstances, which often affected some population groups or minorities more than others.

Turning to the report itself, he said that, in general, he would have preferred to see more ample information on racial discrimination, rather than the "social discrimination" referred to in paragraph 1, although he recognized that the two were interrelated. In particular, he was not sure how the statement in paragraph 1 that "Bangladesh does not recognize any form of social discrimination" could be reconciled with the reference in paragraph 4 to "backward sections of people of different areas and races". If the contention in paragraph 8 that the provisions of the Convention could always be invoked before the courts was correct, was there any reason why the Convention could not be applied automatically?

The demographic details provided with regard to ethnic minorities in paragraph 9, particularly in the Chittagong Hill Tracts, were scanty, and gave little indication of the difficulties and complexities of their situation.

In connection with article 3 of the Convention, he would like to know the grounds for the claim in paragraph 16 that the provisions of that article were not applicable and why no specific legislative, judicial, administrative or other measures had been considered necessary in regard to article 4, as was stated in paragraph 18. In the latter case, it would be interesting to learn whether there had been any public pressure to introduce the provisions covered by article 4.

Did paragraph 20, which dealt with the rights of persons who were arrested, imply that the rule of habeas corpus applied?

Referring to paragraph 23 (2), he said that, at first glance, it appeared to indicate that discrimination might be admissible if it were only partly, rather than exclusively, based on the criteria listed. He would welcome clarification of that important point.

The legal provisions set out in paragraph 42 were admirable, but it would be interesting to learn whether and how they were enforced.

Finally, he would be glad to have more information on the political parties, institutions and associations which, according to paragraph 47, were working to combat racial prejudice, and on the practical measures taken by the Government to that end.

According to the information available to him, which derived from a variety of sources, including reports of the International Labour Organisation (ILO), and annual and specific reports of Amnesty International for 1991 and 1992, there were at least 27 ethnic groups in Bangladesh, 13 of them living in the Chittagong Hill Tracts, an area of some 13,000 km². Estimates of the total population, which belonged to the Tibeto-Burmese linguistic family and were for the most part Buddhists, Hindus or Christians, varied between 500,000 and 800,000.

The recent history of those peoples had been one of gradual encirclement and dispossession. The first step had been taken in the late nineteenth century by the British authorities, who had enacted legislation limiting migration to the Hill districts. The construction of a dam in the period 1957-1963 had inundated 54,000 acres, representing 40 per cent of the

cultivable land, and had displaced some 100,000 people, of whom 40,000 to 60,000 were now in India. The period 1979 to 1983 had seen a policy of large-scale settlement by Bengali colonists from the plains. The result had been the further impoverishment and marginalization of the indigenous peoples, a situation which had led to armed uprising.

Guerrilla groups were now active in the Hill Tracts, and the authorities had responded by virtually militarizing the area, so that the ethnic groups found themselves the victims, not only of economic deprivation, but also of institutionalized violence in reprisal for attacks on settlers and military personnel by guerrilla groups. There were an estimated 35,000 or more security troops and police operating in the Hill Tracts, and the Amnesty International reports gave details of widespread torture and other human rights violations. In one recent incident, several hundred defenceless villagers had been murdered in reprisal for the killing by guerrillas of a Bengali soldier.

A policy of forced resettlement had been pursued in the context of the authorities' counter-insurgency strategy. In the areas of resettlement, curfews and restrictions on movement were such that conditions resembled those in military-run camps. The undeclared low-intensity warfare amounted virtually to State terrorism.

Members of the Government of Bangladesh had admitted that the entire policy of settlement had been a mistake and that it had compounded the agricultural problems of the area by increasing pressure on the land. While it must be recognized that Bangladesh was densely populated, solutions to its problems should not be sought in policies which were tantamount to invasion and which violated the human rights of minority groups, including their property rights, transforming them in many cases into landless plantation workers.

Noting that some development projects were funded by the World Bank and implemented by the military, he asked for further information on current Government policy and in particular on what had happened to the special regulation protecting tribal interests, originally enacted by the British in 1900 and, according to paragraph 9 of the report, still operative.

The meeting rose at 1.05 p.m.